

No. 42575-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JESS JAMES VARNELL,

Appellant.

FILED
COURT OF APPEALS
DIVISION II
2012 SEP 10 AM 9:33
STATE OF WASHINGTON
BY DEPUTY

ON APPEAL FROM THE
SUPERIOR COURT OF THE STATE OF WASHINGTON,
PIERCE COUNTY

The Honorable Katherine Stolz, Judge

APPELLANT'S ADDITIONAL GROUNDS

JESS JAMES VARNELL
DEFENDANT

Jess James Varnell #819012
Coyote Ridge Correction Center-E-A-10
1301 N. Ephrata Avenue
P.O. Box 769
Connell, Washington
99326

TABLE OF CONTENTS

I.	TABLE OF AUTHORITIES.....	pg. i –A–B
II.	TABLE OF AUTHORITIES.....	pg. ii
III.	ASSIGNMENT OF ERRORS (1st Cause No. 10-1-04516-5).....	pg. iii
IV.	ASSIGNMENT OF ERRORS (2ndCause No. 11-1-00638-9).....	pg. iiiii
V.	Mr. VARNELL’S LETTER STATING EXCULPATORY EVIDENCE RECEIVED AFTER TRIAL FROM CRAIG ADAMS, PROSECUTING ATTORNEY.....	pg. J
VI.	STATEMENT OF ADDITIONAL GROUNDS PURSUANT TO RAP 10.10.....	pg. 1 –25
VII.	EXHIBIT’S(DEPUTY W. HOM) EXCULPATORY EVIDENCE.....	pg. A-E
VIII.	EXHIBIT’S (MS. PLATT’S STATEMENT IN 3.5 HEARING BRIEF).....	pg. A-B
IX.	EXHIBIT’S (JOAN SPENCER) EXCULPATORY EVIDENCE.....	pg. A-F
X.	EXHIBIT’S EXCULPATORY EVIDENCE # 4	pg. A-D
XI.	ATTACHED TWO PAGES CONCERNING RULE 2.6 RIGHT TO BE HEARD 2.9 EX-PARTE COMMUNICATIONS, CONFLICT OF INTERESTS.....	pg. 1-2
XII.	DECLARATION OF MAILING.....	last page

TABLE OF AUTHORITIES

	Page	Line
State v. J.P., 149 Wn.2d 444,450 69P. 3d 318(2003).	2	7 fn1
See generally Robert Batey, Vagueness and the construction of criminal Statutes-balancing acts, % Va SOC. Pol'y & L. 1 (1977); Endicott, Note 1, Supra; Jefferies, Note 1 Supra	3	2
Connally v. Gen. Co., 269 U.S.385, 391,(1926)	3	3
Rose v Locke, 423 U.S. 48. 50 (1975)	3	line5 line13-14
Couch v Department of Corrections, 113 Wn. 556, 54, P. 3d 197(2002)	5	8 fn7
State v. Bashaw,169 Wn. 2d 133; 234 P. 3d 195(2010) Review denied.	12	23
Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963) . See 7.03 (A).	14	3
United States v. Agurs, 427 U.S. 97, 96 S. Ct. 2392 (1976) .	13	
Giglio v. United States, 405 U.S. 150, 154, 92 S. Ct. 763 (1972) .	13	
State v Moen, 150 Wn. 2d 221, 76 P.3d 721 (2003)	6	fn10
State v. Rohrich, 149 Wn. 2d 647, 71 P.3d 638 (2003)	6	fn10
State v. Wilson, 149 Wn. 2d 1. 65 P.3d 657 (2003)	6	fn10
State v. Hoffman, 115 Wn. App. 91, 60 P.3d 1261 (2003)	6	
State v Martinez, 121 Wn. App. 21, 86 P.3d 1210 (2004) (dismissal upheld where clearly exculpatory evidence withheld).	6	
State v Lord, 117 Wn. 2d 829, 887, 822 P. 2d (1991)	13	
Kalina v. Fletcher, 522 U.S. 118, 118 S. Ct. 502(1997)	13	
Faretta v California 422 U.S. 806, 45 L. Ed. 2d 562, 95S. Ct 2525(1975)	15	10-11
State v Hahn, 106 Wn. 2d, 885, 889, 726 P. 2d 25 (1986)	15	
U.S. v Borders, 992 F. 2d 563, 566-67(5 th Cir.1993)	16	7

TABLE OF AUTHORITIES

	Page
Santobello v. New York, 404 U.S. 257, 262, 30 L. Ed. 2d 427, 92 S. Ct. 495 (1971)	22
United States v. Camper, 66 F.3d 229, 232 (9th Cir. 1995)	22
United States v. De La Fuente, 8 F.3d 1333, 1340 (9th Cir. 1993)	22
United States v. Arnett, 628 F.2d 1162, 1164 (9th Cir. 1979)	22-23
United States v. Trapp, 257 F.3d 1053, 1056 (9th Cir. 2001)	22
United States v. Kamer, 781 F.2d 1380, 1387 (9th Cir.), cert. denied, 479 U.S. 819, 93 L. Ed. 2d 35, 107 S. Ct. 80 (1986)	22
United States v. Read, 778 F.2d 1437, 1441 (9th Cir. 1985), cert. denied, 479 U.S. 835, 93 L. Ed. 2d 75, 107 S. Ct. 131 (1986)	23
United States v. Clark, 218 F.3d 1092, 1095 (9th Cir.), cert. denied, 531 U.S. 1057, 148 L. Ed. 2d 569, 121 S. Ct. 668 (2000)	23
United States v. Packwood, 848 F.2d 1009, 1011 (9th Cir. 1988)	23
State v Hall, 104 Wn. 2d 486, 706 P 2d 1074 (1985)	21
State v Breshon, 115 Wn. App. 874	23

RCW'S	
9A.08.010(1)(b)	pg.22
9A.76.110(1)	pg.22

TABLE OF AUTHORITIES
RCW’S/CrR/RPC’S

<u>RCW’S:</u>	<u>STATE</u>	<u>PAGES</u>
9.94A.701.....	pg. 2-line-9...	pg. 4-line-12
71.05.390(6)(a).....	pg. 2-line-18...	pg.10-line-8
18.19.....	pg. 5-line-13	fn 9
18.130.180 (1-25) 22).....	pg. 5-line-18-19	
18.130.185.....	pg. 6-line-8	
18.130.170 or 18.130.180..	pg. 6-line-8	
18.130.....	pg. 9-line-20...	pg.10-line-5
71.05.150, 10.31.110, or 71.05.153.....	pg. 10	fn 13
71.05.330(2) and 71.05.340(1)(b) and 71.05.335.....	pg. 10	fn 13
10.77.....	pg. 10	fn 13

FEDERAL

Federal confidentiality rules and the Health Insurance Portability and Accountability Act of 1996(*HIPAA*) (42 CFR part 2) 45 CFR Pts.160 & 164.....	pg. 10-line-9-10
--	------------------

COURT RULES

CrR 3.1(a)(2).....	pg. 2-line-21-fn2
RPC 1 2, and 1.4.....	pg. 6-line-13-fn11 pg.15-line-16
CrRLJ 8.3(b).....	pg. 13

VIOLATIONS OF THE 6th AND 14th AMENDMENT RIGHTS
DOCTRINES USED

Vagueness Doctrine
Reasonable Reliance Doctrine

RULES OF EVIDENCE

Rule 602.....	pg. 5-line-10-fn8
Rule 901 Chapter §17 B.....	pg. 13-line-1
Rule 901(a)(1)(9)(10)...	pg. 7-line-5-fn12
Rule 901 Chapter §17.03	pg. 6-line-12-fn10
Rule 901 Chapter §17.03 A.(1)(3).....	pg. 13 refer pg. 6 fn10
Rule 901 Chapter §17.06.....	pg. 13-line-7

“LAST TWO PAGES CONCERNING CJC AND RPC’S”

Rule CJC 2.6	“Ensuring the Right To Be Heard”
Rule CJC 2.9.....	“Drug Court Ex-parte is Permitted”
Rule RPC’s	“Conflict of Interest: Current Clients”

Jess James Varnell
Additional Grounds Brief RAP 10.10

ASSIGNMENT OF ERRORS
FIRST CAUSE NUMBER 10-1-04516-5

1. DUE-PROCESS VIOLATED IN PLEA AGREEMENT'S CLARITY AS MATTER OF LAW. AMBIGUOUS PLEA AGREEMENT VIOLATES MR. VARNELL'S RIGHT TO "FAIR NOTICE." COVERED IN THE DUE-PROCESS CLAUSE.
2. INEFFECTIVE ASSISTANCE OF COUNSEL MR. VARNELL'S ATTORNEY FOR THE FIRST CAUSE NUMBER FAILED TO DISCERN, IMPLEMENT, AND/OR ADVISE MR. VARNELL AN UNAMBIGUOUS JUDGMENT AND SENTENCE, SUBSEQUENTLY, SUBJECTING MR. VARNELL TO FURTHER PROSECUTION WITHOUT MR. VARNELL'S KNOWLEDGE.
3. SIXTH AMENDMENT RIGHT TO COUNSEL. CHEMICAL DEPENDENCY RECORDS REQUIRE "AGENTS OF THE COURT" TO FILE INCIDENT REPORTS TO COMMITTED PERSONS ATTORNEY, MR. RENDA. THE COURT, PROSECUTOR,, AND AGENTS OF THE COURT HELD A VIOLATION HEARING WITHOUT MR. VARNELL'S KNOWLEDGE, PRESENCE, AND WITHOUT COUNSEL PRESENT AT HEARING
4. DUE-PROCESS REQUIRES "AGENTS OF THE COURT" TO ACTUALLY READ THE JUDGMENT AND SENTENCE AND PLEA AGREEMENT TO SEE WHAT TO HOLD THE OFFENDER IN COMPLIANCE TO, AND TO SEE WHAT THE JUDGE IMPOSES. AGENTS WERE NEITHER PRESENT NOR WERE THEY QUALIFIED TO FILE VIOLATION REPORTS.
5. DUE-PROCESS REQUIRES MR. VARNELL TO BE BROUGHT BEFORE THE SENTENCING COURT. THE COURT ERRED IN NOT BRINGING DEFENDANT BACK BEFORE THE COURT TO ESTABLISH IF THE VIOLATIONS ACTUALLY OCCURRED AND THUS DENYING MR. VARNELL'S RIGHT TO CONTEST AND/OR OBJECT.

Jess James Varnell
Additional Grounds Brief RAP 10.10

ASSIGNMENT OF ERRORS
SECOND CAUSE NUMBER 11-1-00638-9

1. DUE-PROCESS VIOLATED. THE COURT ERRED IN CONSTRUING THE PLEA AGREEMENT OF 11/18/2010. AND FAILED TO LOOK AT WHAT THE DEFENDANT, MR. VARNELL “REASONABLY UNDERSTOOD” WHEN ENTERING HIS PLEA. UNITED STATES V BORDERS, 992 F. 2D 563; (1993). SEE ALSO CITY OF SPOKANE V. ROTHWELL, 215 P. 3D 162 2009.(WASHINGTON JUDICIAL READING INTO STATUTORY LANGUAGE WHEN INTERPRETING A STATUTE, COURTS MAY NOT READ INTO STATUTE MATTERS THAT ARE NOT IN IT).
2. PROSECUTORIAL MISCONDUCT. BRADY VIOLATION. RULES OF EVIDENCE CHAPTER § 17.03, MS. PLATT FAILED TO PRODUCE BRADY MATERIAL CONCERNING HER KEY WITNESSES STATEMENTS AND LATER THEIR PERJURED TESTIMONY’S. THESE PRIMA FACIE DOCUMENTS WERE PRESENT IN THE FIRST CAUSE NUMBER CASE FILE IN THE “TAKE CHARGE” OF MR. VARNELL. THESE WERE THE PROSECUTIONS CONSTITUTIONAL DUTY TO A FULL DISCLOSURE OF EVIDENCE. RPC 3.8 SPECIAL RESPONSIBILITY OF THE PROSECUTOR.
3. SIXTH AMENDMENT RIGHTS VIOLATED. THE COURT ERRED AND VIOLATED MR. VARNELL’S SIXTH AMENDMENT RIGHT TO PROCEED PRO SE WITH STAND BY COUNSEL, DONE IN OPEN COURT AND THUS ALSO CAUSING A CONFLICT OF INTEREST WITH ATTORNEYS WITHIN THE SAME FIRM FARETTA V. CALIFORNIA. 422 U.S. 806, 45 L. Ed 1975.
4. DUE-PROCESS VIOLATED. WHEN THE COURT ERRED IN ENSURING MR. VARNELL’S RIGHT TO BE HEARD, AS CJC RULE 2.6 REQUIRES. AFTER MANY ATTEMPTS BY MR. VARNELL TO BRING MATERIAL EVIDENCE TO THE COURTS ATTENTION, WAS EFFECTIVELY DENIED THE RIGHT TO A “FAIR TRIAL.”
5. INEFFECTIVE ASSISTANCE OF COUNSEL. RPC 1.2; 1.4.. COUNSEL FAILED TO ABIDE BY CLIENTS REQUEST FOR BRADY MATERIAL SHOWING THE COURT THAT THE STATE’S WITNESSES WERE NOT PRESENT IN THE “TAKE CHARGE” OF MR. VARNELL AS THEY CLAIMED. THUS FAILING TO PRESERVE ISSUE’S FOR APPEAL, AND ALSO FAILING TO PROVIDE THE DEFENDANTS LIST OF WITNESSES TO THE COURT IN AND FOR MR. VARNELL’S DEFENSE.
6. DUE-PROCESS VIOLATED. NO PRESENTENCE INVESTIGATION REPORT. (PIR). AS REQUIRED BY LAW.

Jess James Varnell
Additional Grounds Brief RAP 10.10

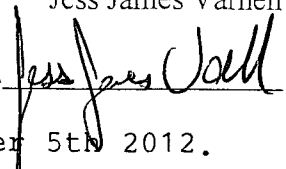
The exculpatory evidence contained in this brief was provided by Pierce County Deputy Prosecuting attorney, Craig Adams, and Legal advisor to Pierce County Sheriff's office in Tacoma, Washington. And state's the transportation records, inmate's sign out document from Pierce County Jail, and vehicle utilization report for the transport of four inmates from Pierce County Jail to Pierce County Alliance were records already contained in the # 10-1-04516-5 (J&S) of 11/18/2010.

These records are contrary to Ms Platt's witness's Incident Report and testimony. Pierce County Sheriff's deputy, W. Hom, and the State's witness committed perjury, and under oath and affirmation during cross examination by Mr. Varnell's attorney confirmed the existence of these records, however could not produce these records when asked for them during trial. (see Records from Craig Adams in EXHIBITS)

I requested these documents from all the officer's of the court, to no avail. All I can ask for is at least a fair trial, and as the court will see, the records for 11/18/2010, and 11/24/2010 show that the State's witnesses were not present or qualified to testify.

I entered a ambiguous Plea Agreement, unaware I could be accountable for requirements not written up in the plea. I further contend that without the State's witness's, Deputy W. Hom, and Joan Spencer's fraudulent statements and perjured Testimony the State has no case. So, I Jess James Varnell respectfully asks the court to dismiss the charge of escape in the first degree, without prejudice.

Thank-You for the Courts Time

Jess James Varnell
Sincerely, 
September 5th 2012.

Jess James Varnell
Additional Grounds Brief RAP 10.10

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON,
Respondent,
v.
JESS JAMES VARNELL
Appellant.

No. 42575-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW
RAP 10.10

I, Jess James Varnell, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

In order to properly present these additional grounds, I will separate the assignment of errors into each of the two cause numbers:

1. Cause No. 10-1-04516-5 represented as [1C#]

2. Cause No. 11-1-00638-9 represented as [2C#]

First Cause No. 10-1-04516-5

Prior to the defendant, Mr Varnell, entering into the [1C#] Stipulated Plea agreement, and Judgment & Sentence, any mis-interpretations or ambiguous legal issues needed to be corrected before Mr. Varnell was advised of his rights and responsibilities concerning the terms and applicable statutes contained in the court ordered Judgment & Sentence. Thus under the advisement of the Superior Court, the prosecution and Mr. Varnell's attorney, Matt Renda, Mr. Varnell's knowledge would only be of the Judgment & Sentence of 11/18/2010, [1C#]. This (J&S) does not order Mr. Varnell to comply with BTC program requirements. However it does

1 require Mr Varnell to do a assessment or evaluation for the DOC at the BTC Facility, and to
2 follow up with the Department of Corrections recommendations.(see evidence #4)

3 After closer review, these improprieties and arbitrary acts committed by the Sentencing
4 Court and attorneys for statutory clarity of the stipulated plea agreement and Judgment &
5 Sentence could not have been foreseen by Mr. Varnell. Thus Mr. Varnell's knowledge was not
6 established prior to the State charging him with escape. The issue here is one of interpretation, as
7 seen in ¹State v. J.P., 149 Wn. 2d .

8 The Superior Court erred in failing to bring Mr. Varnell back before the sentencing court
9 as 9.94A.701 describes, if the sentencing judge imposes the residential treatment based
10 alternative. As part of this sentencing alternative, the court is required to schedule a progress and
11 terminating hearing. Based upon reports by the treatment provider, and the Department of
12 Corrections on my compliance with treatment monitoring requirements and recommendations.
13 This would require Mr. Varnell to be brought back before the sentencing court to establish and
14 determine if any violations of the conditions of the sentence had occurred.

15 Due-process requires that Mr. Varnell be brought before the disciplinary authorities for
16 an evidentiary hearing of the incident reports filed by agents of the court concerning alledged
17 violations. Mr Varnell's right to contest and defend himself before the Court and that Mr.
18 Varnell's attorney, Matt Renda be notified as described in RCW 71.05.390. Chemical
19 dependency disclosure of violations to committed person attorney. All parties present on
20 11/18/2010 concerning [1C#] were notified of incident reports except for the defense, thus
21 breaching the Plea agreement due process, as seen in ²CrR 3. 1

22
23 ¹ State v J P , 149 Wn 2d 444, 450, 69 P 3d 318 (2003) The (Court, Prosecution, and defense attorney's) primary duty in interpreting any
statute is to discern and implement the intent of legislature

24 (a) *Types of Proceedings* The right to a lawyer shall extend to all criminal proceedings for offenses punishable by loss of liberty regardless of
their denomination as felonies, misdemeanors, or otherwise

25 (2) A lawyer shall be provided at every stage of the proceedings, including sentencing, appeal, and post-conviction review A lawyer
initially appointed shall continue to represent the defendant through all stages of the proceedings unless a new appointment is made by the
court following withdrawal of the original lawyer pursuant to section (e) because geographical considerations or other factors make it
necessary

1 These are checks and balances that protect both parties. Statutory language as matter of
2 law.³ A criminal statute must not be “so vague that men of common intelligence must necessarily
3 guess at its meaning and differ as to its application.”⁴ A statute must give “sufficient warning that
4 men may conduct themselves so as to avoid that which is forbidden.”⁵ Mr Varnell was denied
5 due-process when he was convicted and punished for a violation of a statute and Judgment &
6 Sentence that lacks such clarity. Vague statutes are unacceptable because they deny a law
7 abiding person “fair notice,” and they provide police and the prosecutors the opportunity (and
8 may even encourage them) to act in arbitrary and discriminatory manner. This is exactly what the
9 statutory language of the [1C#] Judgment & Sentence of 11/18/2010 caused. Thus the officers of
10 the court of 11/18/2010, clearly failed in properly advising Mr. Varnell of his rights and
11 responsibilities and providing Mr. Varnell “fair notice.” Furthermore, even trained lawyers may
12 find it necessary to consult legal dictionaries, treaties, and judicial opinion’s before they may say
13 with any certainty what some statutes or court orders may compel or forbid. Rose v Locke
14 423,U.S. 48, 50(1975). Therefore, the due-process clause is not violated unless a law abiding
15 person would still have to guess as to the meaning of the statute after Mr. Varnell’s attorneys,
16 Matt Renda, Jane Melby, and Aaron Talney conducted research into the meaning of the law and
17 the statutory language of the 11/18/2010, Judgment & Sentence.

18 Mr. Varnell’s Court appointed attorney, Matt Renda in the [1C#] (J&S) advised Mr.
19 Varnell that he was to have a verifiable address, which I had, and that the court was requiring
20 Mr. Varnell to get a assessment or evaluation at the BTC facility as seen in the Judgment &
21 Sentence, and that the Department of Corrections would follow up with treatment
22

23 ³ See generally Robert Batey, Vagueness and the construction of criminal statutes-balancing acts, 5 Va SOC pol’y&L 1(1977),Endicott, note 1,
24 Supra, Jefferies, note 1, Supra

25 ⁴ Connally v Gen Constr Co , 269 U S 385,391,(1926)

⁵ Rose v Locke, 423 U S 48,50 (1975) footnote omitted

1 recommendations. Similarly, in the reasonable-reliance doctrine, Mr Varnell's belief that his
2 conduct is lawful constitutes a defense if; 1) Mr Varnell relied on an official, but erroneous
3 statement of the law; 2) the statement of the law is found in a statute, judicial decision,
4 administration order or grant of permission, or an official interpretation by a public official or
5 body responsible for the interpretation, administration, or enforcement of the law; and 3) the
6 reliance is otherwise reasonable. Mr. Varnell is excused in these circumstances because
7 according to the commentary, Mr. Varnell acted in a law abiding fashion. The claim is not
8 unduly difficult to prove or disprove. Mr. Varnell could not have had knowledge of terms and
9 applicable statutes not contained in the statutory language written in the Court order of
10 11/18/2010. (See pages 5 of 5, 6 of 6, and Appendix E of the [1C#] Judgment & Sentence.: pg 5
11 of 5, under 4.5 is written in the conversion of jail confinement, "may" require the offender to
12 perform affirmative conduct pursuant RCW 9.94A and the BTC Facility Box is [X].⁶ The next
13 pg. 6 of 6 under 4.6 Community Custody Box is [X]. On the same page, in the middle are four []
14 not checked. The two boxes on the left say: [] remain in geographic boundaries specified
15 by the community corrections officer
16 [] Cooperate with and successfully complete the
17 Program known as Breaking the Cycle (BTC)
18 Handwritten directly below in the "Other conditions" section: DOC to do drug and
19 alcohol evaluation + follow up treatment. And the page marked Appendix "E" on the bottom
20 section of the page, numbered 1 through 6, and "other conditions. Numbers 1, 3, 5, 6 are not
21 checked. No. 1 reads ; remain in prescribed geographic boundaries specified by the community
22 corrections officer. No. 6 reads; Comply with Breaking the Cycle (BTC) Program requirements,
23 including participation in BTC recommended chemical dependency treatment.

24 ⁶9.94A.701 Community Custody Intent - 2008 c 231: "The existing sentencing reform act contains numerous provisions for supervision of
25 different types of offenders This duplication has caused great confusion for judges, lawyers, offenders, and the department of corrections, and
often results in inaccurate sentences

1 The Judgment & Sentence of 11/18/2010, [1C#] was clearly explained to Mr. Varnell that
2 he was to report to the BTC Facility for an assessment and DOC was to follow up with treatment
3 recommendations. (See in exculpatory evidence, DOC's records concerning its recommendation
4 dated January 10, 2012) as you can see there was none.

5 The next issue in the [1C#] is the "Take Charge" of Mr. Varnell by agencies who are to
6 establish a "relationship and duty" in the administration, supervision and probation so ordered by
7 the sentencing courts stipulated plea agreement and Judgment & Sentence.

8 Similarly, as seen in ⁷ Couch v Department of Corrections, due-process would require
9 agents of the court to actually read the court order to actually have knowledge of what to hold the
10 offender in compliance to.⁸ Rules of Evidence, Rule 602. Lack of personal knowledge. Further
11 in the [2C#] trial transcripts, in the direct examination of the States witness Joan Spencer, who is
12 a chemical dependency counselor who is regulated by the Washington State Health Department
13 under the ⁹Chapter 18.19 RCW, who testified under oath and affirmation to be one of the two
14 agents who allegedly "took charge of Mr. Varnell in the [1C#], which was not true. (See the
15 exculpatory evidence from the Department of Health return letter concerning Ms. Spencer's
16 fraudulently signing and dating orientation documents, of 11/24/2010 Stating Her actions were
17 an "*Isolated Incident*" and closed the case.) I Jess James Varnell Filed a complaint with the
18 Department of Health against Joan Spencer under Unprofessional Conduct RCW 18.130.180 (1-
19 25) Specifically 22) Interference with an investigation or disciplinary proceeding by willful
20

21 ⁷ Couch v Department of Corrections, 113 Wn 556, 54, P 3d 197 (2002), review denied "A community corrections officer or (agent of the
22 court) must have a court order before s/he can "take charge of offender, and even when s/he has such an order, s/he can only enforce it to its
"terms and applicable statutes "

23 ⁸ Rule 602 Lack of personal knowledge A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that
the witness has personal knowledge of the matter Evidence to prove personal knowledge may, but need not, consist of the witness' own
testimony This rule is subject to the provisions of rule 703, relating to opinion testimony by expert witnesses

24 ⁹Washington Counselor Credential Act (purpose of the law regulating counselors, Chapter 18 19 RCW) is (A) to provide protection for public
25 health safety, and (B) to empower the citizens of the State of Washington by providing a complaint process against those counselors who would
commit acts of unprofessional conduct

1 misrepresentation of facts before the disciplinary authority or its authorized representative and
2 the act of preventing Mr. Varnell in providing evidence in the disciplinary proceedings. I need to
3 make this very clear, that I, Jess James Varnell informed My attorney's Jane Melby, Aaron
4 Talney, DAC Director, Chief Deputy Richard Whitehead, WSBA Lawyer Discipline committee,
5 WA. Health Department, Washington Commission on Judicial Conduct, and also sending inmate
6 kites and letters to Mark Lindquist requesting an injunction for relief concerning Joan Spencer,
7 Jerry Minaker and Georgia Robinson with Pierce County Alliance which is covered in RCW
8 18.130.185. Injunctive relief for violations of RCW 18.130.170 or 18.130.180. It is well
9 documented with each of these Washington State regulatory agencies the fact I wanted to bring
10 these facts before the court and for my attorney's to motion the court to suppress the fraudulent
11 orientation documents and for Jane Melby, and Aaron Talney to request exculpatory evidence
12 from Karen Platt as is the Prosecutors Constitutional Duty to disclose. As seen in ¹⁰§17.03 ;
13 However this never happened, I asked, I pleaded, I demanded, under¹¹ RPC 1.2 and 1.4 that this
14 evidence be requested in and for my defense, to no avail.

15 I will say again, the Pierce County Superior Court forced me to retain counsel that clearly
16 would not abide in my decision in what to pursue. This exculpatory evidence which was already
17 contained in the [IC#] case file.(See exculpatory evidence provided by Craig Adams a Pierce
18 County Deputy Prosecuting Attorney and legal advisor to the Sheriff, return letter.)I am formally
19 stating again that at no time did I agree to the trial tactics that failed to address that neither of the
20 states witness' were not present as they claim on 11/24/2010.

21
22 ¹⁰ PROSECUTORIAL MISCONDUCT OR MISMANAGEMENT DURING DISCOVERY PROCEEDINGS 1. Duty to Provide Exculpatory and Mitigating
Evidence The Due Process Clause of the United States Constitution²¹ requires the government to provide the defendant favorable evidence
material to guilt or punishment²² This evidence must be provided whether or not the defendant has requested the
23 information²³ Favorable evidence includes both exculpatory evidence and impeachment evidence²⁴

24 ¹¹ Scope of representation and allocation of authority between client and lawyer.(a) Subject to paragraphs (c) and (d), a lawyer shall abide by
a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by
which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A
25 lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after
consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify

1 Previously on page 5, line 5 of this brief I mention the “take charge” of Mr. Varnell by agents of
2 the court, responsible the administration of the Court ordered Judgment and Sentence. I am going
3 to refer to the [2C#] verbatim report of the trial proceedings and the direct examination of Joan
4 Spencer by Ms. Platt deputy prosecutor for Pierce County Washington. This is where the Trial
5 Court erred, as seen in the Rules of Evidence(ER),¹²Rule 901(a)(1)(9)(10) in not striking Ms.
6 Spencer’s Testimony, concerning her lack of knowledge in the administration of Mr. Varnell in
7 the Court ordered Judgment & Sentence of 11/18/2010, [1C#]. The Prosecution was using Ms.
8 Spencer’s Testimony to convince the Jury Mr. Varnell was violating the terms and applicable
9 statutes of the (J&S) of 11/18/2010, [1C#]. By Ms. Spencer’s own testimony, it is made clear she
10 was not a credible witness.

Opening

Direct examination (by Ms. Platt)
Verbatim Report pg 25 lines 2 through 18

12 Q. (by Ms. Platt) Ms. Spencer, I’m publishing page one of the Plaintiff’s Exhibit
13 No. 6; and I would like to ask you a few questions about this. Can you please
14 tell the jurors what document this is.

15 A. It’s a court Document –

16 Q. Mm-Hmm.

17 A. –that’s from the Pierce County Superior Court.

18 Q. All right. Is it something which is called a Judgment And Sentence?

19 A. I- I believe- no. It’s-

20 Mr. Talney: I’d object, Your Honor. The document has been admitted. It
21 speaks for itself. The Prosecutor is just planning to have her read it to the
22 jury. I would object. If she’s actually going to testify about something

23
24 ¹²Rule 901 Requirement of authentication or identification (a) *General provision* The requirement of authentication or identification as a
25 condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent
claims (1) *Testimony of witness with knowledge* Testimony that a matter is what it is claimed to be (9) *Process or system* Evidence describing
a process or system used to produce a result and showing that the process or system produces an accurate result (10) *Methods provided by
statute or rule* Any method of authentication or identification provided by statute or court rule

1 Within her knowledge, that would be permissible; but it appears she's just
2 asking her to read it.

3 Cross examination by Mr. Talney
4 Verbatim report pg 29 line 10 through pg 30 line 25

5 Q. So let's take this one step at a time. I'm going to show you again what's been
6 marked as Plaintiff's Exhibit No. 6, which starts with the warrant of
7 commitment and includes the Judgment and Sentence. And as part of this
8 sentence here in paragraph 4.6 it talks about community custody.

9 A. Right.

10 Q. Ok, and this would be the paragraph that you would be looking for; is that
11 Right?

12 A. That's the paragraph I would note he has DOC.

13 Q. So I just put a sticky on there so that we can kind of all – I can direct your
14 attention to a specific paragraph so we all can be on the same thing.

15 So I'm looking at the paragraph just above where I blocked out the rest of
16 the page, and this whole paragraph 4.6 talks about community custody,
17 community supervision, right?

18 A. **I have never read it, to be truthful.**

19 Q. Okay. Well, I thought yesterday, ma'am, you testified that this, although you
20 weren't familiar with the sentencing documents, this was the one portion of
21 this document that you actually took special care to look at so you could
22 properly advise these people.

23 A. Yes. And I see the 12, so therefore, I know he's got Community service. **But**
24 **to read the whole paragraph, I have never bothered.** I've only looked to
25 see if there's a number there or if it's blank. If it's blank it means there's no
 community – DOC. If it's got a number there it means there's DOC. **And I**

1 **have never taken the time to actually read word to word what those two**
2 **paragraphs say.**

3 Q. Well, how would you know – how would you know the sentence if you never
4 actually took the time to – **how many of these have you done?**

5 A. Multiple. Many.

6 Q. Hundreds?

7 A. At least.

8 Q. Thousands?

9 A. Maybe getting close.

10 Q. And never once have you actually looked to see what the sentence actually
11 was imposed by the judge?

12 A. **NO.**

13 Ms. Spencer was allegedly one of two agents of the court who was to “take charge” of
14 Mr. Varnell, and establish a relationship and duty so imposed by the Superior Court order, which
15 would require these two agents, to actually read the Judgment & Sentence. As the Trial Court
16 Judge was present, it became the duty of the court at this time to evaluate the States witness’s
17 credibility as an administrator to the [1C#] Court ordered Judgment and Sentence of 11/18/2010.

18 So, now I would have to direct the court’s attention to the return letter from the
19 Washington State, Department of Health, Case No: 2011-157460 concerning Ms. Spencer’s
20 unprofessional Conduct pursuant (Chapter 18.130 RCW). The Department of Health called Ms.
21 Spencer’s actions an “**Isolated incident,**” and closed the case.

22 On this very same page, on line 8, Mr. Talney in cross examination asked Ms. Spencer
23 how many Judgment and Sentence’s she’s done as an agent of the court, who again is required
24 by law to administer what the Superior Court Imposed. Q. Thousands? Ms. Spencer answered ;
25 Maybe getting close. And not once did Ms. Spencer ever read what the Judge imposed.

1 This is hardly an "Isolated Incident." Furthermore, Ms. Platt for the prosecution was in
2 receipt of letters from the director of Pierce County Alliance, Jerry Minaker concerning the fact
3 that Mr. Varnell had filed a complaint with the Washington State Department of Health for Ms.
4 Spencer fraudulent signature and date on orientation document used in the discovery. This
5 willful act of misleading facts to the disciplinary authorities violated (Chapter 18.130 RCW), and
6 also violated Mr. Varnell's 14th amendment and Constitutional Right of Due-Process.

7 ¹³Chemical Dependency Disclosure of Information from agents of the court, pursuant
8 RCW 71.05.390 were required to notify Mr. Varnell and Mr Varnell's attorney. The Prosecutor
9 also violated the Federal confidentiality rules (42 CFR Part 2) and the Health Insurance
10 Portability and Accountability Act of 1996(*HIPAA*). 45 CFR Pts.160 & 164.which is part of
11 the orientation documents under "Consent or release of Confidential Information" (See
12 Exculpatory evidence of Joan Spencer) and it reads in super fine print on the bottom last
13 paragraph and the last sentence, **"The Federal rules also restrict the use of such information
14 to criminally investigate or prosecute any alcohol or drug abuse patient."** These Facts and
15 records were in the [1C#] case file and also included in the void orientation documents provided
16 by Ms. Platt. The next issue I will address is the States Next witness, W. Hom an officer with the
17 Pierce County Sheriff's Department, badge #344/92-028, concerning the "Take Charge" and
18 administration of the [1C#] Judgment and Sentence. And I will address Mr. Hom's statements in
19 his incident report, No. 110130284.1, and Mr. Hom's testimony as the prosecution's key witness.

20
21 ¹³**71.05.390. Confidential information and records - Disclosure.**

22 (6) (a) To the courts as necessary to the administration of this chapter or to a court ordering an evaluation or treatment under chapter
23 10 77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered
24 under this chapter (7) (a) When a mental health professional is requested by a representative of a law enforcement or corrections agency,
25 including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or
provide treatment under RCW 71 05 150, 10 31 110, or 71 05 153, the mental health professional shall, if requested to do so, advise the
representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person
investigated Such written report shall be submitted within seventy-two hours of the completion of the investigation or the request from the
law enforcement or corrections representative, whichever occurs later (b) Disclosure under this subsection is mandatory for the purposes of
the health insurance portability and accountability act (8) To the attorney of the detained person (9) To the prosecuting attorney as
necessary to carry out the responsibilities of the office under RCW 71 05 330(2) and 71 05 340(1)(b) and 71 05 335 The prosecutor shall be
provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records
relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others.
"Information shall be disclosed only after giving notice to the committed person and the person's counsel."

1 I would like for the court's attention at this time to address Mr. Hom's Incident report,
2 marked Page 3 of 3, under Narrative: In the second Paragraph-line 2, I've highlighted the date of
3 alledged orientation. 11-24-10, line 4 Mr Hom writes "we" discussed, and line 5 with "We" went
4 into extensive detail. Now if I can direct your attention to Mr. Hom testimony in the [2C#] trial
5 transcripts of July 26th 2011. Cross Examination by Mr. Talney

6 Verbatim report pg 116 line 22 through pg 118 line 14

7 Q. So let me go back to Exhibit 1 through 4 that outline some of the
8 requirements. I don't see that your name appears on any of these documents.
9 is that right?

10 A. That's correct.

11 Q. And so there was no place for you to initial or sign any of the particular
12 documents that you say you've gone over with Mr. Varnell?

13 A. That's correct.

14 Q. And as I understand it, you had a number of contacts on different days with
15 Mr. Varnell?

16 A. Yes.

17 Q. Okay. And so, of course, because of those contacts you don't have any
18 problem recognizing him as he sits here in court. Because you've had
19 conversations with him face to face, Right?

20 A. Yes. Among other techniques and events, yes.

21 Q. Now I assume that you don't work every day, right?

22 A. Not every day.

23 Q. Okay. You work a regular shift, and you're eligible for vacation also; is that
24 right?

25 A. That's correct.

1 Q. Okay. This date, 11/24 in 2010 was the day before Thanksgiving? Were you
2 actually working on 11/24/2010, the day before Thanksgiving?

3 A. I believe I was.

4 Q. Now , one of the things you said is that you would sign out physically these
5 people from Jail. Is that right?

6 A. Yes.

7 Q. Okay. So people who were eligible for BTC, you would sign them out from
8 jail?

9 A. Yes.

10 Q. And then transport them to Pierce County Alliance?

11 A. Yes.

12 Q. So would you have to physically sign a document at the jail?

13 A. Yes.

14 Q. Okay. And so if you were the actual individual who transported Mr. Varnell
15 on that particular day, your signature would be on that document?

16 A. Yes.

17 Q. Do you have the document?

18 A. **NO**

19 Now, from Mr. Hom's own testimony, there would be document's to sign inmates out of
20 Pierce County Jail and transport these inmates to Pierce County Alliance, for evaluations or to be
21 orientated to BTC program. However Mr. Hom or the Prosecutor, Ms. Platt neither had these
22 "prima facie" documents, showing in fact Mr. Hom's testimony and statement were correct and
23 accurate. As Seen in State v Bashaw, 169 Wn.2d 133; 234 P .3d 195; 2010. The Trial court
24 abused its discretion by admitting there testimonies. With no showing that these witnesses were
25 actually present on 11/24/2010. The trial court could not say what might have occurred had the

jury been properly instructed. Wash. Evid. 901 Chapter 17: B. Dismissal for Failure to Provide
Discovery Materials 1. CrRLJ 8.3(b) 2. CrRLJ 4.7 3. Sanctions for Failure to Provide
Discovery Materials. Prosecutorial misconduct must prejudice the defendant's right to a fair trial
in order for a new trial to be constitutionally required.ⁿ² Under the court rules, a charge may be
dismissed for prosecutorial misconduct but only in unusual circumstances.ⁿ³ The remedy for a
violation of the Rules of Professional Conduct is a request for discipline by the bar
association.ⁿ⁴ (n2) Footnote 3. *See* 17.06. (n3) Footnote 4. *State v. Lord*, 117 Wn. 2d 829,
887, 822 P.2d 177 (1991). (n4) Footnote 5. *Kalina v. Fletcher*, 522 U.S. 118, 118 S. Ct. 502
(1997). On page 6 of this brief, in footnote 10 § 17.03; **A. Failure to Provide Exculpatory
or Mitigating Information Violates Due Process 1. Duty to Provide Exculpatory and
Mitigating Evidence. 3. Evidence That Must Be Disclosed**

Prior to the United States Supreme Court decision in *United States v. Bagley*,ⁿ²⁸ the
question of materiality focused on the type of information withheld and the defendant's request,
or lack of request, for the information. In *Bagley*, the Supreme Court held that only one standard
would be used to evaluate the effect of nondisclosure and that standard would be fact-specific to
each case, requiring a review of the record as a whole.ⁿ²⁹ There would not be a rule of
"automatic reversal" for certain types of improperly withheld evidence, as the ninth circuit had
initially ordered.ⁿ³⁰ Instead, the Supreme Court held that prosecutorial suppression of evidence
is a constitutional violation only if it deprives the defendant of a fair trial. A constitutional
error occurs only if the evidence is material. Evidence is material if its suppression undermines
confidence in the outcome of the trial or if its suppression creates a reasonable probability that
the result of the proceeding would have been different.ⁿ³¹ Five justices agreed to this rule.
(Justices Blackmun and O'Connor went on to indicate that evidence not provided in response to
specific requests might more easily be shown to be material. Discovery requests should always
be made and should always be as specific as possible to be of use when raising this issue.)ⁿ³²

1 The Washington State Supreme Court has since adopted this standard for determining the
2 materiality of evidence in nondisclosure situations.ⁿ³³ **4. Standard for Disclosure under**
3 **Washington** State Constitution Prior to the United States Supreme Court decision in *Brady v.*
4 *Maryland*,ⁿ³⁴ this state's supreme court held that permitting or prohibiting discovery was a
5 matter within the trial court's discretion.ⁿ³⁵ Under the Washington constitution, the
6 nondisclosure of favorable evidence rises to constitutional error only where the omitted
7 evidence, evaluated in the context of the entire record, creates a reasonable doubt as to guilt that
8 did not otherwise exist.ⁿ³⁶ The Washington State Supreme Court has now adopted the United
9 States Supreme Court's analysis in *United States v. Bagley*, 473 U.S. 667 (1985) , for use when
10 determining whether evidence was material.ⁿ³⁷ The remedy for breach of this duty to disclose if
11 the defendant is convicted is reversal and remand for new trial,ⁿ³⁸ unless the appellate court
12 determines, upon a review of the record, that the nondisclosure was harmless error. If the issue is
13 raised before or during trial, the remedy may be a continuance or recess.

14 Second Cause No. 11-1-00638-9

15 I Jess James Varnell was effectively denied my right to pro-se representation by the
16 Superior Court Rulings. And so the appellant Court don't have to search the records, the specific
17 dates are June 30th 2011, May 18th 2011, June 1st 2011, and the omnibus hearing where Ms.
18 Melby with the Department of Assigned Counsel represented Mr. Varnell and submitted Mr.
19 Varnell's witness list to include; Matt Renda, Mr. Varnell's attorney for the [1C#], the four
20 Inmates transported from Pierce County Jail to Pierce County Alliance, the Transportation
21 officer, Brian Minturn with the Pierce County Sheriff's Department, Georgia Robinson with
22 Pierce County Alliance, and Mr. Varnell's Landlord, Marie Ainslie to testify on behalf of Mr.
23 Varnell. However, as the records shows, only Marie Ainslie was on Mr. Varnell's witness list.
24 Mr. Varnell was not aware that Ms. Melby failed to subpoena witnesses who were actually
25 present, Mr Renda was Mr Varnell's attorney on 11/18/2010, and his signature is present on the

1 Judgment and Sentence. The rest of this witnesses excluding Ms. Ainslie, were present on
2 11/24/2010. I fired Ms. Melby for failing to abide in requesting exculpatory material and for
3 having me sign my suppression rights away, showing me only the last page of a 3 page document
4 saying this document only concerned submitting the witness list. Ms. Melby filed for substitution
5 within the same firm knowing I was filing a grievance with the WSBA. Which I did, WSBA file
6 No. 11-00886. These improprieties I brought before the court as instructed by the WSBA. To no
7 avail. So I'm formally requesting the Court of appeals to address these improprieties committed
8 by DAC attorneys assigned to this case. Records show these allegations are backed by this paper
9 trail I was instructed to do, to show in fact I exhausted all avenue's.

10 Now if I can direct the court's attention to the VRP of June 1st 2011, where Mr. Talney
11 with DAC states on pg. 2 line 18 through pg. 3 line 7.

12 MR. TALNEY: I have filled out all the portions that I believe are applicable. I've
13 explained them to Mr. Varnell. He doesn't want to sign. He believes that his rights are being
14 violated and so we're here to put it on the record.

15 THE COURT: Okay. Mr Varnell.

16 THE DEFENDANT: I want to – I'm not a lawyer, but I'm in this predicament because I signed
17 papers that –

18 MR. TALNEY: We don't want to talk about the case.

19 THE DEFENDANT: I'm just saying. This is – I want to suppress the evidence put forth
20 towards me because it's falsified documents, and he says that I'm unable to do a suppression
21 hearing.

22 Now if Mr. Talney had not interrupted, I would have completed my sentence concerning
23 Ms. Melby having me sign my suppression rights away. Moreover, as the court can see, Mr.
24 Talney did not deny saying to me that I couldn't suppress the evidence I had in and for my
25 defense. The VRP shows that I wanted to suppress falsified documents, which clearly shows

1 that Mr. Talney was not abiding in his client's decision concerning the objectives of
2 representation and, as required by rule 1.4, shall consult with the client as to the means by which
3 they are to be pursued. In a criminal case, the lawyer shall abide by the client's decision.

4 Now if I can direct the Court's attention to the June 16th 2011 VRP, pg 5 line 3 through
5 line 24, where I attempted to show that an evidentiary hearing was needed to clarify the
6 ambiguous language contained in the 11/18/2010 J&S. Contrary to Mr. Talney's stating that I
7 wanted to address factual issues in this case, I wanted to address facts of the original meaning of
8 the stipulated plea agreement of 11/18/2010. This also shows that Mr. Talney and Mr. Varnell
9 were having some serious communication problems, which prejudiced Mr. Varnell's defense.

10 MR. TALNEY: He wants to address the factual issues in this case that involve the trial.
11 I've warned him repeatedly not to do that. I think he jeopardizes his ability at his trial. He
12 adamantly wants to do that. Again, I advise him he should not be talking about the facts of the
13 case here on the record.

14 THE COURT: He has the right to address the Court, but I will not entertain any
15 discussion about the facts of the case. You do have the right –

16 THE DEFENDANT: I just want to address the Court.

17 THE COURT: You have the right to remain silent. I need to tell you that I'll only hear
18 anything from you as it relates to the continuance. What would you like to say, Mr. Varnell?

19 THE DEFENDANT: I've tried to—in open court, that prosecuting attorney did go into a plea
20 agreement concerning this case in Judge Steiner's court, and it wasn't court ordered for me, as
21 stipulated in this agreement, in Appendix C we all signed on 10/24.

22 MR. TALNEY: Your Honor, this is the facts of his case—

23 THE DEFENDANT: This is a court order.
24 This clearly shows that I understood this Stipulated Plea and Judgment and Sentence differently
25 than the Prosecution, and this is sufficient enough for the court to order an evidentiary hearing.

1 Now if I can direct the court's attention to the VRP of June 30th 2011:

2 THE DEFENDANT: I'm not going to sign anything from the Court – with the prosecution. He
3 did tell me that – he did tell me that Mr. Talney was sick. I just wanted to go into -- and ask if
4 the Court would just hear one thing from me.

5 I've been in custody quite some time now waiting for trial, and I'm ready for this. **The**
6 **prosecution, which is in the discovery – and I know this is not the trial, but – are violating**
7 **the stipulated plea agreement by Judge Steiner's courtroom and the J and S** and falsely
8 charging me with escape which the judgement and sentence doesn't so order in the Judgment and
9 sentence which is in the discovery, and I'm asking the Court to – if they would read – or read
10 over the discovery – excuse me. This is – I'm nervous.

11 THE COURT: Well, I understand –

12 THE DEFENDANT: I don't know how else to proceed. This – my attorney hasn't – every time,
13 he gives me an excuse why we can't go into court and wanting to continue, calling me a stupid
14 fool for not wanting to sign my speedy trial rights away.

15 THE COURT: Now we're going beyond the scope of the hearing. What I'm going to do
16 is continue this matter understanding that you don't want to sign the order continuing, but I think
17 it's necessary since Mr. Talney is not here and the administration –

18 THE DEFENDANT: **Can I get new counsel?**

19 THE COURT: of justice requires us to continue it. When he comes back, you can talk to
20 him about those issues that you are talking about, although they're usually dealt with on the day
21 of trial, I can tell you. Thank you.

22 MR. CURRIE: For the record, I'm going to let Mr. Varnell know that – he's given me
23 some paperwork. He's asking me to file it. I'm going to make copies of it for him, make sure Mr.
24 Talney gets that and make sure he knows about the defendant's issues with him as counsel, but
25 I'm not going to be filing this information with the Court today.

1 THE COURT: Thank you.

2 MR. CURRIE: I don't believe it would be in his best interests.

3 When a plea rests in any significant degree on a promise or agreement of the prosecutor,
4 so that it can be said to be part of the inducement or consideration, such promise must be
5 fulfilled. A guilty plea, if induced by promises or threats which deprive it of the character of a
6 voluntary act, is void. When construing a plea agreement, the court looks to what the defendant
7 "reasonably understood" when entering his plea.

8 The paperwork I wanted to file in the court are records that were already contained in the
9 case file of the 11/18/2010 J&S, showing that the state's witnesses were in fact not present as
10 they were claiming, and that they were violating another regulatory authorities rules, also I had a
11 return letter from the WSBA, File: 11-00886. Which states **"Ineffective assistance of counsel**
12 **issues are best raised in court proceedings."**

13 As the court can see I asked for new Counsel for a number of reasons:

- 14 1. I never requested substitution of counsel within the Department of Assigned Counsel, I
15 filed a grievance against Ms. Melby's improprieties. Consequently assigning new counsel
16 within the same firm would cause a conflict of interests, thus jeopardizing Mr. Varnell's
17 trust concerning his counsel's loyalties.
- 18 2. Communication between Mr. Varnell and Mr. Talney had completely broken down, and
19 every request Mr. Varnell made to Mr. Talney was ignored.
- 20 3. Out of 8 witnesses I requested only one was submitted.
- 21 4. Mr. Talney failed in producing any of the records already contained in the file concerning
22 the Judgment and Sentence of 11/18/2010. Thus showing the states witnesses were
23 mistaken in thinking they were present for an alledged orientation of 11/24/2010.
- 24 5. Failing to abide by RPC 1.2 and 1.4 in the Court room rules.

25 These facts are contained in the records provided by Pierce County Prosecutor's office.

1 To prevail on an ineffective assistance of counsel claim, the petitioner must show (1) that
2 defenses counsel's representation "fell below an objective standard of reasonableness"; and (2)
3 "that the deficient performance prejudiced the defense. "*Strickland v Washington*, 466 U.S. 668,
4 687-88, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

5 The Sixth Amendment to the United States Constitution guarantees the defendant the
6 constitutional right to have compulsory process for obtaining witnesses in his favor, and to have
7 the assistance of counsel for his defense. It is also the right of the accused to present evidence in
8 and for his defense, which I presented to my counsel, the prosecution and the Court. Being their
9 were so many continuances, I was mistaken in the actual date when the judge stated in his
10 opinion I was neither trained or knowledgeable in matters concerning the law. After further
11 review, I see that in the VRP of June 1st 2011, before the Honorable Judge Frank E. Cuthbertson
12 on page 3 line 8 the Court state's:

13 THE COURT: Well, actually, a couple of things. One is, I hope I wasn't the one that
14 ruled that you could represent yourself because you're not a lawyer.

15 The Sixth Amendment to the United States Constitution guarantees the defendant the
16 constitutional right to waive counsel and proceed pro se with standby counsel. *Faretta v.*
17 *California*, 422 U.S. 806, 45 L. Ed. 2d 562, 95 S. Ct. 2525 (1975); *State v. Hahn*, 106 Wn. 2d
18 885, 889, 762 p. 2d 25 (1986). The Judges decision to deny my Sixth Amendment rights, done in
19 open court CDPJ, on June 30, 2011. I Jess James Varnell, under oath and affirmation, state for
20 the Court of Appeals that a complete breakdown in communication and Mr. Talney's and DAC
21 failure to abide by RPC 1.2 and 1.4, the client's decision concerning the objectives to be pursued,
22 prejudiced Mr. Varnell's defense. **The Exculpatory evidence speaks for itself.**

23 Both Ms. Melby and Mr. Talney agreed with me about the fact that the [1C#] stipulated
24 plea agreement and Judgment and Sentence of 11/18/2010, ordered Mr. Varnell to an assessment
25 or evaluation at the BTC facility and the Department of Correction was to follow up with treat-

1 ment recommendations. Moreover, Mr. Talney stated as trial tactics, we would not entertain a
2 cross-examination or suppress the incident reports or testimony because that would lead the jury
3 to believe that I was required to comply with BTC program requirements.

4 Also seen in the VRP of June 16th 2011 on page 5 line 4 and 5 how “Mr. Talney
5 repeatedly and adamantly warned me against addressing the court about how the Court ordered
6 (J&S) of 11/18/2010 does not authorize the agency known as BTC to hold me in compliance to
7 their program requirements.” The Judgment and Sentence so imposed by the Honorable Judge
8 Gary Steiner ordered Mr. Varnell to do an assessment at BTC and the State’s key witness’s
9 incident reports and testimony had no legal backing from the Court Order.

10 However, I disagreed with Mr. Talney’s tactics and contended that the escape charge was
11 evidence that in fact there are some interpretation issues concerning the statutory language
12 contained in the [1C#] plea agreement and J&S of 11/18/2010. I concluded that an evidentiary
13 hearing on the proper interpretation of the plea agreement to determine the intention of the
14 parties as seen in U.S. v. Borders, 992 F. 2d 563, 566-67 (5th Cir.1993) would be up to the court
15 to decide what the defendant Mr. Varnell “reasonably understood” when he entered his plea.

16 Mr. Talney told me to quit writing to the Court’s, the prosecutor’s office, the regulatory
17 agencies, because it was jeopardizing our case. How could evidence in and for my defense,
18 already contained in the 11/18/2010 J&S case file, and the actual witnesses present on record
19 jeopardize my case? These records show that the States witnesses were in fact not present as they
20 claimed and would leave the state with no case.

21 I Jess James Varnell am formally asking the Division II Court of Appeals to look at all
22 the records for 11/24/2010 case file provided by the State. These are facts that are recorded by
23 the agents responsible for the “take charge” of all offenders court ordered to assessments,
24 evaluations, supervision and probation. I wrote ex-parte letters to the trial court concerning Mr.
25 Talney’s failure to bring exculpatory evidence to the court’s attention at the 3.5 hearing.

1 Contrary to the State's brief on the 3.5 hearing, filed in Department 2, in open Court, July
2 25th 2011 in the County of Pierce, by Ms. Platt. Which states , "With the exception of the
3 Address Verification, all of these forms were signed in the presence was signed of Joan Spencer,
4 his case manager. The Address Verification was signed in the presence of Deputy Hom."

5 I furnished D.A.C. and Mr. Talney with the fact that neither Ms. Spencer nor Mr. Hom
6 were present on the alledged signing of BTC forms and reported these facts to the Court and
7 prosecution. The Prosecution had these records, it was their Constitutional Duty to provide these
8 relevant facts, which is clear, was not done.

9 Being, that Mr. Varnell is neither trained nor knowledgeable in matters that concern the
10 law, it then becomes the attorney assigned to the defendant to properly advise their client.

11 Quoting Rule 1.2 under comment [2] "Clients normally defer to the special knowledge and skill
12 of their lawyer with respect to the means to be used to accomplish their objectives, particularly
13 with respect to technical, legal and tactical matters."

14 Mr. Talney is a trained professional, who read the J&S of 11/18/2010, and interpreted the
15 plea for his client Mr. Varnell, an advised that in fact the Court order of 11/18/2010 did not
16 authorize the agency known as BTC to hold Mr. Varnell in compliance to their program
17 requirements. Furthermore, being that Mr. Talney is trained in the law, it becomes very clear that
18 if a trained professional reads this J&S on its face, and comes to this interpretation, which shows
19 that Mr. Varnell's actual knowledge could only be based on what his Court appointed attorneys
20 advised him of.

21 CONCLUSION

22 Based on the foregoing, it is crystal clear that the State "failed" to prove the 'essential
23 element' of the crime of escape in the first degree, to wit: "knowledge;" the culpability element
24 that must be proven to convict under the statute. State v. Hall, 104 Wn.2d 486, 706 P.2d
25 1074 (1985).

1 RCW 9A.08.010(1)(b) describes “knowledge” as: “A person knows or acts “knowingly”
2 or with “knowledge when: (i) he or she is aware of a fact, facts, or circumstances or result
3 described by a statute defining an offense; or (ii) he or she has information which would lead a
4 reasonable person in the same situation to believe that facts exist which facts are described by a
5 statute defining an offense.

6 And pursuant to RCW 9A.76.110(1) “A person is guilty of escape in the first degree if he
7 or she “**knowingly**” escapes from custody or a detention facility while being detained pursuant
8 to a conviction of a felony or an equivalent juvenile offense.”

9 The foregoing facts and arguments are crystal clear, and demonstrates that in the present
10 case, the judgment and sentence “**did not**” ordered the appellant to follow any and all treatment
11 recommendation, the judgment and sentence “**only**” instructed appellant to take an evaluation,
12 therefore, it is clear that the appellant did not contributed to the creation of such circumstances in
13 reckless disregard of the judgment and sentence requirements, and therefore, based on the
14 foregoing, this Honorable Court must reverse the conviction. In the interest of justice and
15 fairness, by the fact that the state “failed” to prove the essential element of the crime, and the
16 judgment and sentence in this case speaks for itself.

17 “In *Santobello v. New York*, 404 U.S 257, 262, 30 L Ed 2d 427, 92 S Ct 495 (1971),
18 the Supreme Court held that, “when a plea rests in any significant degree on a promise or
19 agreement of the prosecutor, so that it can be said to be part of the inducement or consideration,
20 such promise must be fulfilled.” This rule has been regularly and consistently invoked and
21 applied in the Ninth Circuit. See, e.g., *United States v. Camper*, 66 F.3d 229, 232 (9th Cir.
22 1995); *United States v De La Fuente*, 8 F.3d 1333, 1340 (9th Cir 1993); *United States v Arnett*,
23 628 F.2d 1162, 1164 (9th Cir 1979)

24 In determining whether a plea agreement has been breached, contract law principles
25 apply. See *United States v. Trapp*, 257 F 3d 1053, 1056 (9th Cir. 2001), *United States v Kamer*,

1 781 F.2d 1380, 1387 (9th Cir.), cert. denied, 479 U.S. 819, 93 L. Ed. 2d 35, 107 S. Ct. 80 (1986),
2 United States v. Read, 778 F.2d 1437, 1441 (9th Cir. 1985), cert. denied, 479 U.S. 835, 93 L. Ed.
3 2d 75, 107 S. Ct. 131 (1986); United States v. Arnett, supra "In construing an agreement, the
4 court must determine what the defendant reasonably understood to be the terms of the agreement
5 when he pleaded guilty." United States v. De La Fuente, 8 F.3d at 1337. Thus, under the
6 foregoing authorities, if the terms of the agreement are disputed, a party's contention regarding
7 his subjective understanding is not dispositive; rather, any dispute over the terms of the
8 agreement must be determined by objective standards. If "a term of a plea agreement is not clear
9 on its face, we look to the facts of the case to determine what the parties reasonably understood
10 to be the terms of the agreement." United States v. Clark, 218 F.3d 1092, 1095 (9th Cir.), cert.
11 denied, 531 U.S. 1057, 148 L. Ed. 2d 569, 121 S. Ct. 668 (2000) If an examination of the
12 extrinsic evidence does not eliminate the ambiguity in the terms of a plea agreement, the
13 ambiguous terms must be construed in the defendant's favor. See Clark, supra, De la Fuente,
14 supra; United States v. Packwood, 848 F.2d 1009, 1011 (9th Cir. 1988).

15 Now if I can direct the court's attention to the VRP's of July 27th 2011, concerning the
16 defense's Motion to Dismiss; On page 50 Mr. Talney quotes the case *State v. Breshon, 115 Wn.*
17 *App. 874* Which Mr. Talney states for the record that; page 50 line 17-18, "it's directly on
18 point." Further in the VRP, page 51 line 5 through page 51 line 24.

19 Mr. Talney: "Similarly, the Sentencing Judge here ordered Breshon and Simmons – it
20 was – they combined the two cases – to report daily to the treatment facility."
21 According to Hammonds, which is the case they're citing, they were in custody on the days they
22 failed to appear because they were under restraint pursuant to a court order. Thus, they
23 committed first-degree escape from custody of the sentencing order; and, again, at the very end
24 of the opinion, it says, " In conclusion, we hold that Breshon and Simmons were in custody
25 pursuant to the court order, that they report daily to BTC. When they failed to report, they

1 committed first-degree escape.” And so the key, there, is that they were ordered by the Court to
2 report daily to BTC; and that, and only that, that makes it a first degree escape.

3 **When one looks at the actual Judgment and Sentence which was admitted as**
4 **Exhibit No. 6, nowhere in the Judgment and Sentence and the Warrant and Commitment**
5 **does it actually require Mr. Varnell to report daily to BTC or to report to – to BTC in any**
6 **particular way.**

7 So under the advisement from the Court appointed attorneys assigned to Mr. Varnell in
8 both cases, at no time did Mr. Varnell have any knowledge concerning requirements not so
9 ordered in the Judgment and Sentence of 11/18/2010.

10 At this time I ask the court to review the VRP of proceedings of July 27, 2011, in the
11 rebuttal closing arguments by Ms. Platt on Page 91 Line 2 through 5:

12 (By Ms. Platt). “Let’s look at his credibility. He’s a deputy, He’s a sworn officer, He’s
13 supposed to uphold the law. He’s supposed to implement the Court orders”.

14 At this time I ask the court to review the VRP of proceedings of the Direct examination
15 of Joan Spencer by Ms. Platt on July 26th, 2011. On Page 8 line 12 through 19;

16 Q. (By Ms. Platt) Ms. Spencer, were you present when Jess Varnell went through the
17 orientation with Deputy Hom on “November 24th ?”

18 A. Yes

19 Q. And to the best of your recollection did Deputy Hom go through all the steps with that
20 orientation class ?

21 A. He always did.

22 Q. Thank you very much.

23 I Jess James Varnell, am looking at a letter backed with transportation records and the
24 Inmate sign out sheet, provided by Deputy Prosecuting Attorney Craig Adams. Stating Brian
25 Minturn, a Deputy with the PCSD signed inmates out of Pierce County Jail to Pierce County

1 Alliance on "November 24th of 2010."

2 These records speak for themselves. Both Ms. Spencer and Deputy Hom who are agents
3 of the Court, who are supposed to implement the Court orders, and uphold the law as Ms. Platt
4 bolstered to the Court and Jury, got on the stand and committed perjury under oath.

5 Ms. Platt used the status of a officer of the law to persuade the Jury that Mr. Varnell was
6 properly orientated to requirements contained in the Judgment and Sentence of 11/18/2010. The
7 Prosecution used fraudulent documents and perjured testimony to convict Mr. Varnell of a crime
8 he did not commit.

9 When one looks at all the facts the State has in the case file for 10-1-04516-5 concerning
10 11/18/2010, and 11/24/2010, the Court will see out of all the people present during the trial of
11 case No. 11-1-00638-9, only Mr. Varnell was present on 11/18/2010 and 11/24/2010. Mr.
12 Varnell requested for the original court officers to testify in and for his defense, to include Mr.
13 Varnell's original Attorney in the [1C#] Mr. Renda, to no avail.

14 The last issue I would like to address is the Honorable Judge Katherine Stolz's statements
15 in the VRP of September 9th, 2011. The Court on page 114 lines 7 through 8 ;

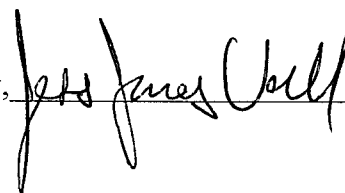
16 THE COURT: "Sir, you know, your argument is making no sense to me, I'm not here to deal
17 with that." Which is contrary to ¹⁴CrRLJ 8.3(b).

18 I Jess James Varnell motion the Court of Appeals, that the elements I've provided beyond
19 a preponderance of evidence the State's willful suppression of exculpatory material violated Mr.
20 Varnell's "Constitutional Right to a Fair Trial" and warrants a dismissal of charges."

21 Thank-you and God Bless.

22 Respectfully submitted this September 4, 2012

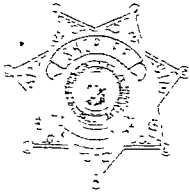
23 Sincerely,



24
25 ¹⁴ CrRLJ 8 3(b) *On motion of court* The court, in the furtherance of justice after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. The court shall set forth its reasons in a written order

(DEPUTY W. HOM)
EXCULPATORY EVIDENCE
EXHIBIT'S

- A. Records Request return letter from Pierce County Deputy
Prosecuting Attorney, Craig Adams..... (p. 12,4-11).
"Transportation Officer 'Brian Minturn' Contrary
Officer Hom's Testimony."
- B. Pierce County Sheriff's Department, Vehicle Utilization
Report for November 24, 2010. (p. 12,4-11)
'Transportation Officer 'Brian Minturn.'
- C. Pierce County Detention and Corrections Center. Officers'
document to sign out inmates. (p. 12,4-18).
"For November 24th 2010. 'Brian Minturn'
see Incidental Report of "WE" and Testimony."
- D. and D.1. Request for records return letter from Craig Adams
Pierce County Deputy Prosecutor..... (p.
"States,that these documents shows Brian Minturn and not W. Hom was
present on (11/24/2010). Contrary to Testimony of Ms. Platt who had
this evidence yet failed to produce it."
- E. Incident Report by Deputy W. Hom with Pierce County Sheriff's
Department..... (p. 10,18-19).
also..... (p. 11,1-4).



Pierce County

Sheriff of Pierce County

930 Tacoma Avenue South
Tacoma Washington 98402

16 November 2011

Mr. Jess James Varnell
#819012
R-4-H-13
Washington State Corrections Center
PO Box 900
Shelton, WA. 98584

RE: Records request

Dear Mr. Varnell:

After I mailed to you a letter of this date with an enclosure the enclosed document was brought to my attention. I enclose a copy of that document. The document shows that Deputy Brian Minturn checked out the vehicle used to make the transport on November 24, 2010.

Because the cost for this record is less than one dollar (\$1.00) there is no charge.

Yours very truly,

Craig Adams

Deputy Prosecuting Attorney and
Legal Advisor to the Sheriff



15B

PIERCE COUNTY SHERIFF'S DEPARTMENT
CORRECTIONS BUREAU

VEHICLE UTILIZATION REPORT

DATE: _____

OFFICER(S) USING VEHICLE: _____
(Please print name and 5-digit ID number)

VEHICLE NUMBER / COLOR / MAKE / MODEL / LICENSE PLATE # / COMMENTS:

- ☐ 32416 - GREEN / FORD / CROWN VICTORIA / 61756C / (slick top, unmarked, one red/blue light rear deck)
☐ 32425 - GREEN / FORD / CROWN VICTORIA / 61783C / (slick top, unmarked, amber light bar rear deck)
☐ 32465 - GREEN / FORD / CROWN VICTORIA / 65038C / (slick top, marked)
☐ 32468 - GREEN / FORD / CROWN VICTORIA / 65041C / (slick top, marked, light bar rear deck)
☒ 42301 - WHITE / FORD / E250 TRANSPORT VAN / 71921C
☐ 82403 - WHITE / CHEVROLET / UPLANDER (MINI VAN) / 80999C / (NO SHIELD)
☐ 1059 - GREEN / FORD / CROWN VICTORIA / 59636C / (slick top, unmarked, one red/blue light rear deck)
☐ OTHER: _____
(List vehicle number, color, make, model, & license plate #)

MILEAGE AT CHECKOUT: 15029.7 MILEAGE AT CHECK IN: _____

TIME CHECKED OUT: 0947 TIME CHECKED IN: 1216

DESTINATION: 27C
(List the name of the destination i.e.: TG, ST. JOES, WESTERN STATE, PSH, RJC, etc...)

LIST ANY DAMAGE ON THE VEHICLE: _____

LIST ANY MAINTENANCE PROBLEMS WITH THE VEHICLE: _____

This form is to be filled out each and every time a vehicle is moved for any reason.

- The vehicle number is stamped into the brass tag on every key ring.
- Completed form is to be placed in the file box in the Booking Sergeant's Office that is marked General Maintenance Officer.
- Remember to return the key to the Booking Sergeant and the key box when you are finished with the vehicle.
- Sergeants are to ensure that this form and the Vehicle Checkout Log are filled out correctly.

Pat Kelly
Captain Pat Kelly

8/16/10
Date

08/17/10

C

Pierce County Detention and Corrections Center

Break the Cycle Inmates

11-24-10

Booking ID	Person Name	DOB	Cell	Property Bag	Court Date	Release Date
2010300012	HARRIS, JOSEPH RANDALL	09/10/77	3B57	830	10/19/10	04/14/11 08:00
2010300013	CLARKE, DAVID ROBERT CK	11/08/54	3B55	1495	11/17/10	12/26/10 08 00
2010278014	COOK, KENNETH SM	09/02/78	3A21	116	11/18/10	04/04/11 08 00
2010295012	VARNELL, JESS JAMES CK	06/02/67	3A58	275	11/18/10	03/12/11 06 00
2010300010	CHUMMAN, DAVID PERRY	08/28/61	3B52	187	11/22/10	02/25/11 08:00
2010306045	WYATT, OVIDE J CK	10/25/76	3C14	570	11/22/10	12/12/10 08 00

X

11-24-10



Pierce County

Sheriff of Pierce County

930 Tacoma Avenue South
Tacoma, Washington 98402

30 November 2011

Mr. Jess James Varnell
#819012
E-A-10
Coyote Ridge Corrections Center
PO Box 769
Connell, WA. 99326

RE: Request for records

Dear Mr. Varnell:

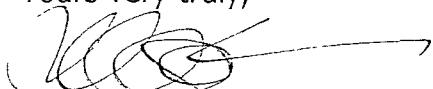
This is what I have been able to identify as records for your case that are now in our possession:

1. BTC Inmates, 11/24/10	1 page
2. Vehicle utilization report	1 page
3. Escape report, 11-013-0284	3 pages
4. Alternative Confinement address verification	1 page
5. Rules and conditions	1 page
6. Client enrollment	1 page
7. Counselor/Case manager disclosure information	4 pages
8. Consent for release of records	1 page
9. Confidentiality of Client records	1 page
10. Program Guidelines	1 page
11. Statement of client rights	1 page
12. Notice of urinalysis policies/procedures	2 pages
13. Agreement to pay alternative confinement fees	1 page
14. Day reporting schedule	1 page
15. Statement of income	1 page
16. Authentication record	1 page
17. Warrant of Commitment/Judgment and Sentence	12 pages
18. Violation report	1 page
19. Letters from you to BTC and Hom	6 pages
20. Letter from PC Alliance to you	1 page
21. Jail release records	21 pages
22. Letter from Jerry Minaker to you	1 page



These are all the records which I have been able to identify which may apply to your request. If you want any or all of these records please identify which records it is that you want. Also, be advised that each page will cost .15 (fifteen cents). To speed this process you may want to include a money order in the sum you order. For example, if you ordered thirty (30) pages, the cost would be four dollars and fifty (\$4.50). Otherwise we will not send any records until you have made payment.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Craig Adams', with a long horizontal flourish extending to the right.

Craig Adams
Deputy Prosecuting Attorney and
Legal Advisor to the Sheriff

EZ

Pierce County Sheriff Department Incident Report	Incident No. 110130284.1	Page 3 of 3
---	--------------------------	-------------

Narrative

On 01-13-11 at approximately 0850 hrs I arrived at [REDACTED] to conduct a follow-up investigation. This address is the location where (SV) Jess James VARNELL had listed as his place to serve his sentence while in the Alternative Confinement Program. Varnell had failed to check in and was not answering his phone. Moreover, the "roommate" at this location had told me he was no longer living there.

2 cd
Per [unclear]

Varnell was an inmate at the Pierce County Jail and was transferred into the Alternative Confinement Program to complete his remaining sentence. He was transferred into the program on 11-24-10 with the conditions and rules set forth in the attached enrollment documents. Varnell acknowledged each of the rules with his initials and signed the documents. Moreover, he was part of a group session where we discussed in detail the rules and conditions of this program. We went into extensive details on the requirements of being at the location identified on the address verification form and the potential consequence of being charged with escape.

lines

1
2
3
4
5
6

On 01-10-11 Ms. Spencer, case manager for Varnell, informed me he missed his previous week appointments and failed to sign in. He was last accounted for on 01-03-11 when we discussed a treatment plan for his repeated positive UA results.

I called the number Varnell had listed on his Address Verification form. A male who identified himself as "Kevin" answered the phone. I explained to him the purpose of my call and was told that "Jessie" was "not around" and his "stuff" was still in his side yard. I asked Kevin to pass on a message that I need to see Varnell.

On 01-12-11 at approximately 1630 hrs I retrieved a phone message from Varnell. In this message he said he knew he had failed the program and said he needed more time to get his things put away. He also mentioned he was hoping he would not be charged with escape and is willing to come in and serve out his time.

I again called the phone numbers Varnell listed on his address verification form and noted the cell number was no longer in service. The "house number" was answered again by Kevin. He told me he had passed my message to Varnell when he showed up briefly at the house on the evening of 01-10-11. He said he has not seen him since.

Varnell's whereabouts is currently unknown. There is probable cause for the arrest of Varnell for Escape. This case is referred to the Prosecutor for review and charging.

W Hom
PCSD #344/92-028

Reviewed By

Reviewed Date

2.9

EXHIBIT'S

A. (front side) INMATE KITE, TO MARK LINDQUIST, PROSECUTION
FOR PIERCE COUNTY.

B. (back side) INMATE KITE _

D.A.C. OBSTRUCTED THIS COMPLAINT COVERED IN 18.130.170 OR
18.130.180 Pg. 6. AND INTERCEPTED THIS LEGAL
COMMUNICATION WITH PROSECUTION COVERED BY WASHINGTON
COUNSLER CREDINTIAL ACT 18.19.

Attached:

18, 235, 180 - violation of another regulatory body.

Notify the Attorney General or prosecuting Attorney in the County the act took place.

On 6/3/2011 I notified the Prosecuting Attorney's office. However, it was either intercepted, this Kite was communicating with the prosecution about legal Civil Issues that are Highlighted Below, which effect a criminal Proceeding. Either way my 1st Amendment rights were violated By D.A.L.

Legal
Tank 2D-12 Mark Lindquist Date 6/3/2011
TO Prosecution for Pierce County
Message. I am filing charges against
Joan Spencer #CP 00002780 with
Falsifying Documents, being used
in the Prosecution of Jess James Varnell
UNDER State law - RCW 18, 130, 180 and
violating 18, 19, 180. AND Federal laws +
Regulation making it a crime. I've filed
with the US Attorney's office.

NO KITES ACCEPTED
AFTER 6 00 A M

- over -

Jess Varnell

(Print Name)

Z-776

Front side
of kite
Pg 1 of 2

(42 U.S.C. and 42.C.F.R. Part 2)

RCW 18.130.180

RCW 18.19.180

I've filed with "Wa Dept of Health" on 07 2011

US Attorneys of Health
Judicial Council of Assigned Counsel

and are currently working the A.C.L.U. King's
News with BIC Counselor files falsified

Documents in the illegal prosecution of
Client, look closer into this, Miss Spencer

Did not, or was not present at office
County Alliance, During Orientation on

11/24/2011 Thanksgiving Day. Neither was
RCSD #92-028 with false statement, Rose Marie

William USB #201821, Karen Part I'm filing against
with a penalty of paying

Back side
of file

Page 2

(Ms. Platt's Statements)

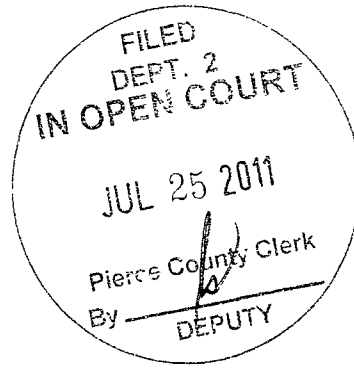
EXHIBIT'S

A. Ms. Platt's 3.5 Hearings Brief..... (p.

B. Alternative Confinement Address Verification Form..... (p.

B. ABOVE:

Contrary to Ms. Platt's 3.5 Hearing's Statement, Mr. Hom's
Signature is nowhere on the form to support the Court's
ruling. refer to 'Additional Grounds Brief'at..... (p.12,14-18).



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO.11-1-00638-9

vs.

JESS JAMES VARNELL,

Defendant.

STATE'S BRIEF ON 3.5 HEARING

I. STATEMENT OF FACTS

Defendant entered a guilty plea to Attempted Unlawful Possess of a Controlled Substance, methamphetamine, on November 19 2010, in cause number 10-1-04516-5. He was sentenced to 207 days in custody, to be served in the BTC program, less credit for 27 days already served.

Defendant was taken from the jail to the BTC program on November 24, 2010, where he formally enrolled in the BTC program. At this time he was still in custody. He was presented with copies of an Alternative Confinement Address Verification Form, Rules and Conditions, a notice of Confidentiality of Client Records, the Program Guidelines and a Notice of Urinalysis Policies and Procedures. With the exception of the Address Verification, all of these forms were signed in the presence of Joan Spencer, his case manager. The Address Verification was signed in the presence of Deputy Hom. see following page, Mr. Hom's Signature is not on the document.

11-013-0284

Alternative Confinement Address Verification Form

 I understand I must report to the Department of Corrections,
955 Tacoma Ave. So., within 24 hours.

 I understand that the following address will be my cell assignment
while participating in the Alternative Confinement Program.

 I understand that I am still "In Custody" and need to reside at my
listed address. If I fail to report an address change or fail to report
to Alternative Confinement, an Escape Warrant may be issued.

 I understand failure to live at this listed address will result in failing
the Alternative Confinement Program and I will be returned to
the Pierce County Jail for the remainder of my sentence as issued
by the Court.

 I understand that this listed address may be searched by the
Alternative Confinement Deputy in the event my whereabouts are
unknown to Alternative Confinement or in the event I am not
complying with rules and conditions of the Alternative
Confinement Program.

Offender Name

Jesse James Varnell

Offender Address

[REDACTED] [REDACTED]
I live in my 5th wheel on side of this address
Mickey or Kevin reside in Home

Offender Telephone

[REDACTED] [REDACTED]
my House #

Living with (circle one) Relatives Friends Mission Self Other

Mickey or Kevin

Offender Signature

Jesse James Varnell

Date

11/24/2010

Additional Grounds

(JOAN SPENCER)
EXCULPATORY EVIDENCE
EXHIBIT'S

- A. Department of Health, Letter..... (p.5,Line 14-17).
"Calling Ms. Spencers actions an 'Isolated Incident.'"
- B. Cover Page..... (p.5,Line 17)
Letter to Pierce County Alliance-Jerry and Joan Spencer's
unprofessional conduct..... (p. 6,Line 2).
- C. Pierce County Sheriff's Department..... (p.
Return letter from Jerry Minaker.
- D. Consent/Release Confidential Information..... (p.10,Line 7-14).
"Federal Rules Violated,Pursuant to (42 CFR, Part 2)."
- E. Counsler/Case Manager Disclosure of Information..... (p. 5,Line 13).

1. refer to page... E-1
2. refer to page... E-2
3. refer to page... E-3
- F. Inmate Kite to Prosecutor's Office..... (p. 6,Line 8).
A. "Department of Assigned Counsel (D.A.C.),
and Obstruction of Justice." Obstructed Mr. Vanell's
B. kite to the Prosecuting Attorney under RCW 18.130.170
or 18.130.180.



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

July 01, 2011

JOAN C SPENCER

Subject: Case No. 2011-157460

Dear Ms. Spencer

The Secretary of Health, Chemical Dependency Professional Program has reviewed a concern about you alleging unprofessional conduct.

We have closed this case as this was an isolated incident.

We may reconsider this decision if we receive more relevant information or identify a pattern of similar complaints.

This decision is based on a careful review of the facts and state law. State law defines the disciplinary process and unprofessional conduct (Chapter 18.130 RCW). We cannot consider issues outside our authority.

The person who filed this complaint has been notified of this decision. The state's whistleblower law does not allow us to identify the person who filed the complaint.

You have the right to request any information contained in the file. If you would like a summary of the case or other materials in the file, please submit a written request for a copy to the Department of Health, Public Disclosure & Records Center, PO Box 47865, Olympia, WA 98504-7865 or fax to (360) 586-2171.

If you have questions, please contact us at (360) 236-2620 or email us at hsqacomplaintintake@doh.wa.gov

Sincerely,

Kristi Cholski
Office of Customer Service
Complaint Intake Unit



6/6/2011

Cover Page

HSO
RECEIVED

JUN 30 2011

Cause # 10-104516-6

on J+S

Signed By

Judge Steiner

Nov 18 2010

Attention: BTC
Program Mgr.

Jerry Minsker LC# 00003654

COUNTER

B

CP#
00002780

BTC Counselor's - UNProfessional Conduct RCW 18.130.180
Joan Spencer - Did knowingly falsify documents, +
willingly file such documents in Prosecuting Client
Subjecting Client to Further Prosecution.

CP#
00001647

Georgia Robinson - Did not follow BTC Policy or Protocol
concerning Orientation on 11/24/2010 thus subjecting
client to further prosecution by state.

D

RECEIVED

JUL 01 2011

COMPLAINT INTAKE

THIS

DOES NOT

CONSTITUTE

VIOLATING

FEDERAL + STATE

LAWS + REGULATIONS

PURSUANT TO

FEDERAL (42 U.S.C. and 42 C.F.R. Part 2)

MAKING IT A CRIME, PROVIDED CONFIDENTIALITY RCW 18.19.180

"UNProfessional Conduct"

RCW 18.130.180 1 thru 25 described in chapter

I've written:

I've called

Wa. State Dept of Health

US Attorney

1201 Pacific Ave

101 Israel Rd SE Po Box #

Suite #450

(253) 428-3800

47890 Olympia WA 98504

Tacoma WA 98402

Judicial Conduct Commission

King Television c/o Jesse Jones

210 11th Ave SW # 400

333 Dexter Ave N

(206) 448-5553

Olympia WA 98501

Seattle WA 98109

and Adam Lynn with Tacoma News Tribune

I am currently writing: A.C.U. - Wa State

901 Fifth Ave Suite 630

Seattle WA 98164 (206) 241-2104

Concerning BTC Counselor's Falsifying Documents
and Filing such Documents in The Prosecution
OF Client, in Alleged ESCAPE, in Prison 53-70.
ON 11/24/2010 Joan Spencer was Not Present
I Never met Miss Spencer until Monday 19th Nov 2010

Dept of Health

#2.A

C

PIERCE COUNTY ALLIANCE

510 Tacoma Avenue South, Tacoma, Washington 98402 (253) 572-4750

I'm requesting the work seedling

June 14, 2011

RECEIVED
JUL 01 2011

Pierce County Sheriff's Department
910 Tacoma Ave S
Tacoma WA 98402-2168

COMPLAINT INQUIRY UNIT

Dear [Name]

Your transfer from the Pierce County Jail to Pierce County Alliance is analogous to a change of jail cell location. Your Alternative Confinement at Pierce County Alliance was authorized by the court and contingent upon compliance of program rules and requirements *Was Not Here's Jt. For Proof*

The Deputy Sheriff assigned to Alternative Confinement has the authority to return non-compliant inmates. Your positive UA of 12/6/10 and failure to meet sign in requirements constituted the basis for the Deputy to submit an escape report and return you to the Pierce County Jail

I am returning the documents you have sent. Your privacy rights do not require case managers to neglect their obligation to report Failure to Appear for scheduled reporting to Alternative Confinement. In fact, case managers are obligated to report failed UA's and/or failure to appear to the Deputy Sheriff. The deputy is obligated to report an escape incident to the prosecutor's office. The prosecutor decides if charges are filed.

Sincerely,

Jerry Minaker

Jerry Minaker, M.A., LMHC
Programs Manager
Pierce County Alliance

That Jerry Minaker + BTC STAFF Did Knowingly Violate Client Counselor RCW Pursuant + Contrary to Judge Murt + Sentence Cause # 10-1-04576-1 and RCW. 18.130.180 as described in chapter 1-25. Joan Spencer 00002780 was not there on 11/24/2010 for orientation as seen with her signature + Date. Dictator was Officer Horn.

The information contained herein is protected by federal confidentiality rules (42 CFR Part 2). These rules prohibit any further disclosure unless expressly permitted by written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The federal rules also restrict the use of such information to criminally investigate or prosecute any alcohol or drug abuse patient.

A private, non-profit organization serving the special needs of Pierce County

PCA 511Amsw (07/58)

CONSENT FOR THE RELEASE OF CONFIDENTIAL INFORMATION
ABOUT MEDICAL HEALTH AND ALCOHOL OR DRUG TREATMENT

I, JOSEPH JAMES V. GILLY authorize Alternative Confinement/ CJTA program of the Pierce County Alliance
and

The following Alcohol or Drug Treatment Provider:		The following other provider of information necessary for cross-systems communication:	
Name:		Name: PC Superior Court	Name: PC Prosecutor's Office
Address:		Address: [REDACTED]	Address: [REDACTED]
Phone Number:		Tacoma, WA 98402	Tacoma, WA 98402
		Phone: [REDACTED]	Phone: [REDACTED]
The following Mental Health Treatment Provider:			
Name:		Name: Washington State DOC	Name: Dept. Assigned Counsel
Address:		Address: [REDACTED]	Address: [REDACTED]
Phone Number:		Tacoma, WA 98402	Tacoma, WA 98402
		Phone: [REDACTED]	Phone: [REDACTED]
Other:		Other:	
Name:		Name:	
Address:		Address:	
Phone Number:		Phone Number:	

To communicate with and disclose to one another the following information: (The client must initial each type of information authorized)

DATE	INITIALS	Chemical Dependency/Substance Abuse Treatment	DATE	INITIALS	Mental Health Treatment
11-24-10	[initials]	CD Assessments and Treatment Plans			MH Intake and Treatment Plans
11-24-10	[initials]	CD Treatment History and Progress Reports			MH Treatment History and Progress Reports
11-24-10	[initials]	CD Treatment Discharge Summaries			MH Treatment Discharge Summaries
11-24-10	[initials]	CD Treatment Continuing Care Plan			Psychological Evaluations
11-24-10	[initials]	Urinalysis and other drug and alcohol monitoring results			Psychiatric Evaluations
11-24-10	[initials]	Tuberculosis related information			Urinalysis & other drug & alcohol monitoring results
		Other:			Tuberculosis related information
					Other:
DATE	INITIALS	Department of Corrections	DATE	INITIALS	Other: Specify other information as necessary for Cross-systems collaboration.
11-24-10	[initials]	Compliance with Supervision			
11-24-10	[initials]	Conditions of Supervision			
11-24-10	[initials]	Mental Health Assessments			
11-24-10	[initials]	Violations of Terms of a Court Ordered Treatment			
11-24-10	[initials]	Urinalysis and other drug and alcohol monitoring results			
11-24-10	[initials]	Tuberculosis related information			
		Other:			
DATE	INITIALS	The purpose of the disclosures authorized in this consent is:			
11-24-10	[initials]	1) To improve public safety by allowing communication and multidisciplinary case management and release planning.			
11-24-10	[initials]	2) To enable treatment providers to communicate continuing care plan referrals to the above agencies			
		3) Other:			
DATE	INITIALS	METHOD OF RELEASE			
11-24-10	[initials]	Voice (telephone or face-to-face)		11-24-10	Facsimile (fax) or E-mail
11-24-10	[initials]	Hand delivery or mail			Other

I understand that my alcohol and/or drug treatment records are protected under the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 Code of Federal Regulations (CFR) Part 2, and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 45 CFR Parts 160 and 164, and cannot be disclosed without my written consent unless otherwise provided for in the regulations. I understand as a condition of the program that the agency provides a chemical dependency evaluation, UA/BA results, periodic treatment progress reports and related information to the Court which are included in the Court record, and that these items then become part of the public record and are therefore subject to public access. I also understand this consent will remain in effect and cannot be revoked by me unless there is a formal and effective termination or revocation of my conditional release or other proceeding under which I was ordered into a program of the Pierce County Alliance. I understand that Pierce County Alliance might deny services if I refuse to consent to a disclosure for the purpose of treatment, payment, enrollment, and eligibility for benefits or health care operations, if permitted by state law. I will not be denied chemical dependency treatment services if I refuse to consent to a disclosure for other purposes. Pierce County Alliance will provide me with a copy of this Authorization as signed by me.

XXXX If I am not under any Criminal Justice System order or obligation, I may revoke this consent in writing, except to the extent that the program has already taken action upon it. Otherwise, this consent will expire no later than sixty (60) days after my discharge from the program. I agree to keep confidential the identity and any information about other clients both during and after my program participation.

I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it, and that in any event this consent expires automatically as follows: Ninety (90) days from the date signed or the following specific date, event, or condition upon which this consent expires (Specify the date, event, or condition) 60 days after discharge

I agree to extend this
release for 90 days
after the date initialed Initials:

Client Signature

Date

Counselor/Witness Signature

Date

The information disclosed herein is protected by federal confidentiality rules (42 CFR Part 2) and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 45 CFR Pts. 160 & 164. These rules prohibit any further disclosure unless expressly permitted by written consent of the person to whom it pertains or as otherwise permitted by law. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules also restrict the use of such information to criminally investigate or prosecute any alcohol or drug abuse patient.

COUNSELOR/CASE MANAGER DISCLOSURE INFORMATION

PIERCE COUNTY ALLIANCE
CRIMINAL JUSTICE TREATMENT ACCOUNT
510 TACOMA AVE. S., TACOMA, WA 98402
BUS. (253) 572-4750; FAX (253) 272-6666

GENERAL INFORMATION

"Counselors practicing counseling for a fee must be credentialed with the Department of Health (DOH) for the protection of the public health and safety. Credentialing of an individual with the department does not include recognition of any practice standards, nor necessarily implies the effectiveness of any treatment" The purpose of the Washington State Counselor Credentialing Act (purpose of the law regulating counselors, Chapter 18.19 RCW) is: (A) to provide protection for public health and safety, and (B) to empower the citizens of the State of Washington by providing a complaint process against those counselors who would commit acts of unprofessional conduct. As individuals, you have the right to choose counselors who best suit your needs and purposes

COUNSELOR'S EDUCATION, TRAINING, AND EXPERIENCE

All counselors providing services for Criminal Justice Treatment Account program are required to meet the minimum education, training and experience requirements of a Chemical Dependency Professional as defined by the Washington State Department of Health, 18.19 RCW.

Jerry Minaker:	Program Director; LC 00003654 (Licensed Mental Health Counselor); Master in Psychology 1975, Institutional Management since 1977 Criminal Justice Training Academy, Executive Management & New Superintendent Training, Washington State Executive Management Training.
Jerry Burrage:	Lead Counselor; Chemical Dependency Professional Credential #CP 00003256; Bachelor of Religious Arts (B.R.A.) 1999. Substance Abuse Assessment Fundamental Training 04/2009, Moral Reconciliation Therapy (MRT) 02/2008; ASAM, Assessment Progress Notes & Treatment Planning Training 06/2007, Gain Short Screen Training 01/2007, Understanding Addiction 05/2006.
Barney Bryant:	Counselor; Chemical Dependency Professional Credential #CP 00004918, AAS in Alcoholism and Drug Abuse from Tacoma Community College 2004; Law & Ethics 10/2009; Treating Chemically Dependent Clients With PTSD 06/2009; Crisis Intervention 06/2009; Substance Abuse Assessment Fundamental Training 04/2009; Moral Reconciliation Therapy (MRT) 02/2008; ASAM, Assessment Progress Notes & Treatment Planning Training 06/2007; Gain Short Screen Training 01/2007;
Joan Spencer:	Counselor, Chemical Dependency Professional Credential #CP 00002780; Bachelor of Science 2000; AAS Alcoholism & Abuse 2000 Law & Ethics 10/2009; Treating Chemically Dependent Clients With PTSD 06/2009; Crisis Intervention 06/2009; Moral Reconciliation Therapy (MRT) 02/2008; ASAM, Assessment Progress Notes & Treatment Planning Training 06/2007; Gain Short Screen Training 01/2007;
Georgia Robinson	Counselor; Chemical Dependency Professional Credential #CP 00001647; AAS in Alcohol and Drug Abuse 1991; Substance Abuse Assessment Fundamental Training 04/2009, Moral Reconciliation Therapy (MRT) 02/2008; ASAM, Assessment Progress Notes & Treatment Planning Training 06/2007;

TYPE OF COUNSELING PROVIDED

The counselors provide chemical dependency counseling services to include: chemical dependency assessment, treatment planning, individual counseling, substance abuse education (education in chemical dependency and recovery), group process counseling, case management, referral services, discharge planning and aftercare services

METHODS AND TECHNIQUES THE COUNSELOR'S USE

In the CJTA Program, you may receive counseling services from all of the counselors working in the program. Every participant is assigned to a primary counselor who provides chemical dependency assessment, individual counseling, education in chemical dependency and recovery, and aftercare and discharge planning.

COURSE OF TREATMENT

During the course of participation in the CJTA, Level 1 outpatient - 18 weeks program, individual will be expected to

- Complete 72 hours of outpatient treatment. Attend required individual or group sessions (group process)
- Remain abstinent from all illegal drugs throughout program. Attend all random UA/BA sessions
- Sustain a recovery sober support system. Attend self-help support meetings
- Maintain regular contact with a self-help support sponsor. Meet with sponsor, same gender church, AA meeting, etc

BILLING INFORMATION & COST PER EACH COUNSELING SESSION

Fees are based on the Full Fee Schedule. A sliding fee is available for clients eligible for services funded through a grant from Pierce County Human Services. There will be no treatment fees applied to clients entering the CJTA program. The program fee (payment) policy is outlined in the Agreement to Pay CJTA Fees that every participant receives and is reviewed during the program orientation.

CONFIDENTIALITY (provided by RCW 18.19.180 (1) through (6) - Confidential Communications

An individual registered under this chapter shall not disclose the written acknowledgment of the disclosure statement pursuant to RCW 18.19.060 nor any information acquired from persons consulting the individual in a professional capacity when that information was necessary to enable the individual to render professional services to those persons except:

- 1) With the written consent of that person or, in the case of death or disability, the person's personal representative, other person authorized to sue, or the beneficiary of an insurance policy on the person's life, health, or physical condition,
- 2) That a person registered under this chapter is not required to treat as confidential a communication that reveals the contemplation or commission of a crime or harmful act;
- 3) If the person is a minor, and the information acquired by the person registered under this chapter indicates that the minor was the victim or subject of a crime, the person registered may testify fully upon any examination, trial, or other proceeding in which the commission of the crime is the subject of the inquiry;
- 4) If the person waives the privilege by bringing charges against the person registered under this chapter,
- 5) In response to a subpoena from a court of law or the secretary. The secretary may subpoena only records related to a complaint or report under chapter 18.130 RCW; or
- (6) As required under chapter 26.44 RCW {2001 c 251 - 24; 1991 c 3 - 33; 1987 c 512 - 11 }

UNPROFESSIONAL CONDUCT RCW 18.130.180

The following conduct, acts, or conditions constitute unprofessional conduct for any license holder under the jurisdiction of this chapter:

- 1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

11-013-0284

- 2) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement thereof;
- 3) All advertising which is false, fraudulent, or misleading;
- 4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed;
- 5) Suspension, revocation, or restriction of the individual's license to practice any health care profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;
- 6) The possession, use, prescription for use, or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, diversion of controlled substances or legend drugs, the violation of any drug law, or prescribing controlled substances for oneself;
- 7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;
- 8) Failure to cooperate with the disciplining authority by:
 - a) Not furnishing any papers, documents, records, or other items;
 - b) Not furnishing in writing a full and complete explanation covering the matter contained in the complaint filed with the disciplining authority;
 - c) Not responding to subpoenas issued by the disciplining authority, whether or not the recipient of the subpoena is the accused in the proceeding; or
 - d) Not providing reasonable and timely access for authorized representatives of the disciplining authority seeking to perform practice reviews at facilities utilized by the license holder;
- 9) Failure to comply with an order issued by the disciplining authority or a stipulation for informal disposition entered into with the disciplining authority;
- 10) Aiding or abetting an unlicensed person to practice when a license is required;
- 11) Violations of rules established by any health agency;
- 12) Practice beyond the scope of practice as defined by law or rule;
- 13) Misrepresentation or fraud in any aspect of the conduct of the business or profession;
- 14) Failure to adequately supervise auxiliary staff to the extent that the consumer's health or safety is at risk;
- 15) Engaging in a profession involving contact with the public while suffering from a contagious or infectious disease involving serious risk to public health;
- 16) Promotion for personal gain of any unnecessary or inefficacious drug, device, treatment, procedure, or service;
- 17) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;
- 18) The procuring, or aiding or abetting in procuring, a criminal abortion;
- 19) The offering, undertaking, or agreeing to cure or treat disease by a secret method, procedure, treatment, or medicine, or the treating, operating, or prescribing for any health condition by a method, means, or procedure which the licensee refuses to divulge upon demand of the disciplining authority;
- 20) The willful betrayal of a practitioner-patient privilege as recognized by law;
- 21) Violation of chapter 19.68 RCW;
- 22) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the disciplining authority or its authorized representative, or by the use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action, or by the use of financial inducements to any patient or witness to prevent or attempt to prevent him or her from providing evidence in a disciplinary proceeding;
- 23) Current misuse of: (a) Alcohol; (b) Controlled substances; or (c) Legend drugs;
- 24) Abuse of a client or patient or sexual contact with a client or patient;

6th Right to Native Counsel
 14th Amend Due Process

25) Acceptance of more than a nominal gratuity, hospitality, or subsidy offered by a representative or vendor of medical or health-related products or services intended for patients, in contemplation of a sale or for use in research publishable in professional journals, where a conflict of interest is presented, as defined by rules of the disciplining authority, in consultation with the department, based on recognized professional ethical standards

WASHINGTON STATE DEPARTMENT OF HEALTH
101 ISRAEL RD SE., P.O. BOX 47890
OLYMPIA, WA 98504-7890
(360) 236-4700

ACKNOWLEDGMENT: I have been provided with a copy of the required disclosure information and have read and understand the information provided

Jesse James Varnell
Participant's Name (Print Clearly)

11-24-10
Date

Jesse James Varnell
Participant's Signature

Joan Spencer
Counselor's/Staff Signature

11/24/10
Date

MS. Spencer was not present
on 11/24/2010. MS. Robinson was
and did not go over orientation Document
as MS Spencer Clinic's.

(EXCULPATORY EVIDENCE #4)

EXHIBIT'S

- A. Department of Corrections. Return letter, Recomendations...(p.
From Chemical Dependency Records.....(p.
- B. Judgment and Sentence, pg. 5 of 5. Cause NO. 10-1-04516-6,
Date November 18, 2010.(p.
- C. Judgment and Sentence. pg. 6 of 6. Cause NO. 10-1-04516-6,
Date November 18, 2010.(p.
- D. Judgment and Sentence. Appendix E. Cause NO. 10-1-04516-6,
Date November 18, 2010.(p.



State of Washington

DEPARTMENT OF CORRECTIONS

Chemical Dependency Unit
PO BOX 41123 • Tumwater, WA 98504-1123
(360) 725-8601 • Fax (360) 586-0039

January 10, 2012

Coyote Ridge Correction Center
Jess James Varnell # 819012 E-A-10
P O Box 769
Connell, WA 9326

Re. Varnell, Jess
DOC # 819012

Dear Sir or Madam:

Your request for copies of chemical dependency records maintained by the Washington State Department of Corrections was received by this office

There is no evidence that Mr Varnell was assessed, or attended any Chemical Dependency treatment program offered by the Department of Corrections while incarcerated or under supervision

This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR Part 2). The federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is **NOT** sufficient for this purpose. The federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

Should you have any questions, please feel free to contact me at (360) 725-8601

Sincerely,

Roxana Garcia
Records Assistant

For: Patty Noble-Desy
Chemical Dependency Program Administrator
PN/nb

10-1-04516-6

4.4a BOND IS HEREBY EXONERATED

4.5 JAIL ONE YEAR OR LESS The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the county jail:

207 days/months on Count I days/months on Count days/months on Count days/months on Count

Actual number of months of total confinement ordered is:

[X] CONSECUTIVE/CONCURRENT SENTENCES RCW 9.94A.589

All counts shall be served concurrently, except for the following which shall be served consecutively:

The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed prior to the commission of the crime(s) being sentenced.

The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here. [] The sentence herein shall run consecutively to the felony sentence in cause number(s)

The sentence herein shall run consecutively to all previously imposed misdemeanor sentences unless otherwise set forth here:

Confinement shall commence immediately unless otherwise set forth here:

[] PARTIAL CONFINEMENT. Defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions:

[] Work Crew RCW 9.94A.725 [] Home Detention RCW 9.94A.731, .190

[] Work Release RCW 9.94A.731

[X] CONVERSION OF JAIL CONFINEMENT (Nonviolent and Nonsex Offenses). RCW 9.94A.680(3) The county jail is authorized to convert jail confinement to an available county supervised community option and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.

[X] BTC Facility

[] ALTERNATIVE CONVERSION. RCW 9.94A.680. days of total confinement ordered above are hereby converted to hours of community restitution (8 hours = 1 day, nonviolent offenders only, 30 days maximum) under the supervision of the Department of Corrections (DOC) to be completed on a schedule established by the defendant's community corrections officer but not less than hours per month.

[] Alternatives to total confinement were not used because of:

[] criminal history [] failure to appear (finding required for nonviolent offenders only) RCW 9.94A.680.

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

10-1-04516-6

27 day

4.6 COMMUNITY ☐ SUPERVISION ☒ CUSTODY. RCW 9.94A.505 Defendant shall serve 12 months (up to 12 months) in ☐ community supervision (Offense Pre 7/1/00) or ☐ community custody (Offense Post 6/30/00)

[On or after July 1, 2003, the court may order community custody under the jurisdiction of DOC for up to 12 months if the defendant is convicted of a sex offense, a violent offense, a crime against a person under RCW 9.94A.411, or felony violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy or solicitation to commit such a crime. For offenses committed on or after June 7, 2006, the court shall impose a term of community custody under RCW 9.94A.715 if the offender is guilty of failure to register (second or subsequent offense) under RCW 9A.44.130(1)(a).]

Defendant shall report to DOC, 755 Tacoma Ave South, Tacoma, not later than 72 hours after release from custody, and the defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. For sex offenses, defendant shall submit to electronic monitoring if imposed by DOC. Defendant shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision or community custody and any other conditions of community supervision or community custody stated in this Judgment and Sentence or other conditions imposed by the court or DOC during community custody. The defendant shall:

- | | |
|--|--|
| <input type="checkbox"/> remain in prescribed geographic boundaries specified by the community corrections officer | <input type="checkbox"/> notify the community corrections officer of any change in defendant's address or employment |
| <input type="checkbox"/> Cooperate with and successfully complete the program known as Breaking The Cycle (BTC) | <input type="checkbox"/> not reside in a community protection zone (within 880 feet of the facilities and grounds of a public or private school) (RCW 9.94A.030(8)). |

Other conditions: DOC to do drug alcohol eval + follow up treatment

☐ For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

The community supervision or community custody imposed by this order shall be served consecutively to any term of community supervision or community custody in any sentence imposed for any other offense, unless otherwise stated. The maximum length of community supervision or community custody pending at any given time shall not exceed 24 months, unless an exceptional sentence is imposed. RCW 9.94A.589.

The conditions of community supervision or community custody shall begin immediately unless otherwise set forth here.

4.7 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections:

NOV 18 2010

APPENDIX "E" - ADDITIONAL CONDITIONS OF RELEASE

It is further ordered that the defendant, as a condition of his/her community supervision, as a first-time offender, shall.

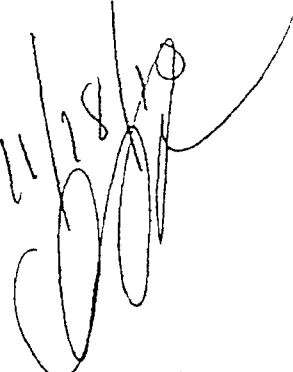
- ____ FTO 1) Refrain from committing new offenses;
- ____ FTO 2) Devote time to a specific employment or occupation;
- ____ FTO 3) Enter and successfully complete Breaking the Cycle (BTC) or other available outpatient treatment for up to two years, or inpatient treatment as designated by Community Corrections Officer;
- ____ FTO 4) Pursue a prescribed, secular course of study or vocational training;

It is further ordered that the defendant, as a condition of his/her community supervision, shall:

- ____ 1) Remain within prescribed geographical boundaries. Notify the court or the community corrections officer prior to any change in the defendant's address or employment;
- ☒ 2) Report as directed to the court and a community corrections officer;
- ____ 3) (NARC order) Refrain from entering certain geographical boundaries (designated by attachment);
- ☒ 4) Not purchase, possess, or use any controlled substances without a lawful prescription from a licensed physician or practitioner. Provide a written prescription for controlled substances to the Community Corrections Officer within 24 hours of receipt. Submit to urinalysis as directed by the Community Corrections Officer;
- ____ 5) Refrain from associating with drug users or drug sellers;
- ____ 6) Comply with Breaking the Cycle (BTC) Program requirements, including participation in BTC recommended chemical dependency treatment;

OTHER:

DOC to use dry alcohol and
follow up testing

11/18/10


EXHIBIT'S

Taken WSBA FILE NO. 11-01469; KAREN D. PLATT, WABA 17290

1pg WSBA FILE NO. 11-00886 Jane Melby - - - - -

Pg 1a

(See Joan Spencer Exculpatory)
WASHINGTON CREDENTIAL ACT REGULATORY COUNSELORS 18.19 ...
JOAN SPENCER - CASE NO. 2011-157460

Taken COMMISSION ON JUDICIAL CONDUCT
COMPLAINT NO. 6796 (OPEN)

(NOTE)

"Upon Mr. Varnell's transfer, these documents were illegal and without cause, taken from Mr. Varnell, Thus, Violating his Constitutional Rights of access to the Courts."



WSBA

OFFICE OF DISCIPLINARY COUNSEL

Felice P. Congalton
Senior Disciplinary Counsel

June 1, 2011

Jess J. Varnell
#2011083054
Pierce County Corrections
910 Tacoma Ave S
Tacoma, WA 98402-2168

Re WSBA File 11-00886
Your grievance against lawyer Jane Melby

Dear Mr. Varnell:

We received your grievance against a lawyer and assigned the file number indicated above. We appreciate receiving information from the public about lawyers licensed in Washington state. However, our authority and resources are limited. The Washington State Bar Association is authorized to investigate a grievance against a lawyer to determine whether the lawyer's conduct should have an impact on his or her license to practice law. We are not a substitute for protecting your legal rights. We do not and cannot represent you in legal proceedings.

We reviewed your grievance and determined that your primary concern is the manner in which your lawyer represented you in a criminal case. Ineffective assistance of counsel issues are best raised in court proceedings. Therefore, the general policy of this office is not to investigate claims of ineffective assistance of counsel unless there is a judicial finding of impropriety. It does not appear that the court found any impropriety.

We believe it is in your best interest, and in the best interest of the lawyer against whom you are complaining, that we tell you as soon as possible if it appears that the conduct you describe is not within our jurisdiction, does not violate the Supreme Court's Rules of Professional Conduct (RPC), or does not warrant further investigation by our office. Under the Rules for Enforcement of Lawyer Conduct (ELC), a lawyer may be disciplined only upon a showing by a clear preponderance of the evidence that the lawyer violated the RPC.

Based on the information we reviewed, there is insufficient evidence to warrant further action, therefore, we are dismissing your grievance under ELC 5.6(a). If you do not mail or deliver to us a written request for review of this dismissal within forty-five (45) days of the date of this letter, the decision to dismiss your grievance will be final. Should there be a judicial finding of impropriety, you may request that we reopen this matter. Absent special circumstances and unless we are provided with reasons to do otherwise, we will forward to you a copy of any response we receive from the lawyer.

Sincerely,

Felice P. Congalton
Felice P. Congalton
Senior Disciplinary Counsel

Enclosure: Lawyer Discipline in Washington

cc: Jane Melby
(with enclosure and copy of grievance)

I Brought this and a copy of grievance against Karen Platt. Disclosure issues 71.05.330(2) and 71.05.340(1)(b) 71.05.340 (USC 42 and Title CFR 42 Part d) before Judge Stoitz, she would not even listen. So what court is WSBA talking about.

8/2/2011 I wrote Mark Lindquist concerning Karen Platt 17290 my grievance with Karen Platt at WSBA office of disciplinary counsel. State v Wheat Disclosure

Rule 2.6. Ensuring the Right to Be Heard.

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.*

(B) Consistent with controlling court rules, a judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but should not act in a manner that coerces any party into settlement. **History:** Adopted September 9, 2010; effective January 1, 2011.

COMMENT

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification or recusal may be appropriate. See Rule 2.11(A)(1).

Rule 2.9. Ex Parte Communications.

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending* or impending matter,* before that judge's court except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, or ex parte communication pursuant to a written policy or rule for a mental health court, drug court, or other therapeutic court, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge affords the parties a reasonable opportunity to object and respond to the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law* to do so.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the

Varnell

substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) A judge shall not investigate facts in a matter pending or impending before that judge, and shall consider only the evidence presented and any facts that may properly be judicially noticed, unless expressly authorized by law.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

History: Adopted September 9, 2010; effective January 1, 2011.

COMMENT

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge. [2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given. [3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule. [4] A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others. [5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter. [6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

Conflict of interest: current clients.

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing (following authorization from the other client to make any required disclosures).

History: Adopted June 25, 1985, effective Sept. 1, 1985; amended June 13, 1995, effective Sept. 1, 1995; amended, effective September 1, 2006.

COMMENT

General Principles

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of

DIVISION II COURT OF APPEALS
STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent

Case No. 42575-1-II

v.

JESS JAMES VARNELL

Appellant

DECLARATION OF MAILING

I, Jess James Varnell, declare that, on September 5th, I deposited the foregoing [list document/s]:

APPELLANT'S ADDITIONAL GROUNDS BRIEF, EXCULPATORY EVIDENCE
PROVIDED BY PIERCE COUNTY PROSECUTORS OFFICE

or a copy thereof, in the internal mail system of

Coyote Ridge Correction Center, 1301 N. Ephrata Ave., P.O. Box 769, Connell WA. 99326
and made arrangements for postage, addressed to each of the following:

Court of Appeals: DIV. II

Brian Neal Wasankari

Katheryn Russell Selk

950 Broadway, Suite 300

Pierce County Prosecuting Atty.

Post office Box 31017

Tacoma, WA. 98402-4454

930 Tacoma Ave. S Rm. 946

Seattle WA. 98103

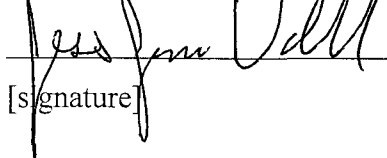
Tacoma, WA. 98402-2171

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at CRCC-E unit in Connell Washington

on this 5th day of September, 2012.

Jess James Varnell #819012


[signature]